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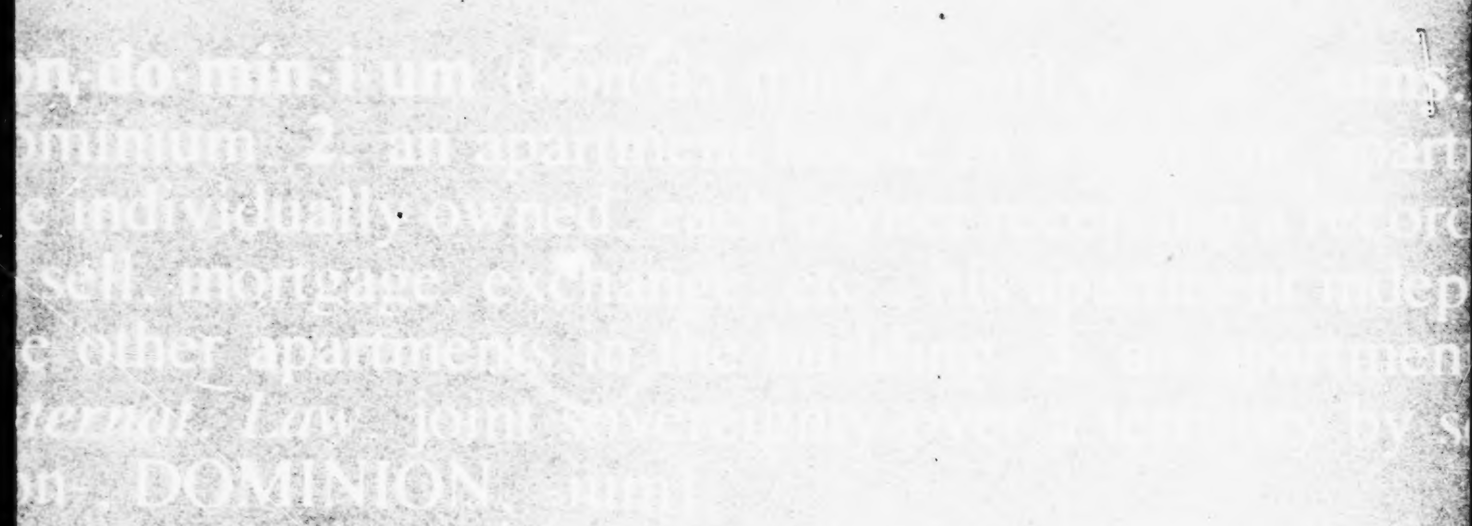

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The Conversion of Rental Housing to Condominiums and Cooperatives

State and Local Conversion Regulations

Division of Policy Studies
August 1981

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INTRODUCTION

The conversion of rental property to condominums and cooperatives has been a highly controversial issue at all levels of government. Proponents of conversion argue that it provides opportunities for homeownership, for renovation, and for a broadening of the local tax base, while opponents argue that it depletes the rental housing stock and leads to disruption, hardship, and increased housing costs -- especially for the elderly, the handicapped, and low income households. Out of this debate, which has taken different forms in different places, has emerged a variety of legislation and regulations at the local and state levels. This legislative spectrum can be divided into three broad categories.

- There are tenants' protections such as the right to remain in occupancy while seeking alternative housing, to have an exclusive option to purchase, and to receive relocation assistance if one does not purchase.
- There are rental stock protections such as moratoria, intended to halt conversions, or legislation intended to slow the rate of conversion by relating it to such factors as the rental vacancy rate and/or the addition of new rental units to replace those slated for conversion.
- There are consumer protections which provide rights to the purchasers of converted units such as property reports and information disclosure requirements and warranties. These have generally followed the pattern which applies to newly constructed housing but address conversion more directly through requirements to inspect older buildings, provide adequate reserve funds, and clarify warranty provisions.

In this report, the history of conversion legislation is reviewed and various issues and trends associated with state and local regulation of conversion are discussed. All relevant state statutes, 54 separate local ordinances (selected from the nation's thirty-seven largest Standard Metropolitan Statistical Areas), and a variety of secondary sources have been reviewed. 1/ In addition, a systematic survey of local chief executives and many interviews with other local officials, developers, and representatives of tenant groups were used to complement this review. Most of this research was done in conjunction with a report to the Congress undertaken by the U.S.

1/ Updating of the specific state statutes and local ordinances is not uniform throughout the report due to the volume of regulations reviewed and the number which are currently pending. To the extent possible, all state statutes and some local ordinances reported are current as of December 1980 unless otherwise noted; the remainder of local ordinances are current as of August 1980.

Department of Housing and Urban Development entitled The Conversion of Rental Housing to Condominiums and Cooperatives: A National Study of Scope, Causes and Impacts. 2/ The reader is referred to that report for more information about the methods and data sources used as well as for information about other aspects of the condominium and cooperative conversion phenomenon.

This report is divided into two parts: the first addresses the basic legal issues surrounding conversions in a general fashion; whereas the second describes, in more detail, specific state and local laws which regulate conversions.

Part I begins by addressing the history of and issues concerning conversions, and the development of conversion law in the past two decades. This is followed by a description of the basic types of conversion regulation: (1) tenant protections; (2) rental stock protections; and, (3) buyer or consumer protections. The next section focuses on the intergovernmental aspects of regulations, and includes the arguments often made in cases challenging the legality of conversion laws. The major provisions of the Uniform Condominium Act, particularly as they relate to conversions, are then described to demonstrate a comprehensive model state condominium statute. The final section examines the scope of local conversion regulation and the prospects for the future enactment of laws regulating conversions.

Part II provides many examples of state and local laws which regulate conversions to illustrate both their range and variance throughout the country. It begins with those that protect the tenants of converting buildings, including "special" tenant protections for handicapped, elderly, or low- and moderate-income households. The next section lists and describes several categories of regulations designed to preserve the rental stock in a community through the adoption of local ordinances which restrict conversion. The preservation of low- and moderate-income housing is a new form of protective legislation, and its adoption, thus far, has been limited to only a few communities. Examples of this type of regulation are highlighted. The concluding section describes state and local laws that protect the purchasers of converted units. Consumer or buyer protections (as they are referred to in this report) also serve to establish a developer's rights and responsibilities in the conversion process.

2/ (Washington, D.C.: U.S. Government Printing Office, 1980), Chapters XI and XII. See also Ibid., Appendix 2, Chapters IV, V, X-XII.

PART I - HISTORY

Although condominium ownership has been regulated by all states since the 1960's, the legislation directed specifically toward conversions emerged in response to the sudden surge of conversions in the 1970's. The original wave of condominium legislation (referred to here as "first-generation" legislation) adopted by all states during the 1960s, was designed to establish the condominium form of ownership, specify the administrative procedures for establishing a condominium regime, and describe the responsibilities of homeowners' associations. These laws applied primarily, if not entirely, to newly constructed condominiums; few areas outside New York City had experienced conversions. New York had established a comprehensive system of conversion regulation over several decades, but most other localities were unprepared for the problems generated by conversions. As states began the lengthy process of amending their "first-generation" condominium laws to solve the technical problems in newly constructed condominiums and to include provisions for conversions, some communities began to enact interim legislation to deal with specific local conditions.

With the advent of revised condominium legislation in Virginia, and its model act counterpart (the Uniform Condominium Act), states have increased their regulation of condminiums to provide more tenant and consumer protections. Part of that effort has been focused on the unique problems and interests of tenants and purchasers of conversions. State efforts to regulate conversions have generally provided tenants with two basic protections--advance notice of the conversion, and the right of first refusal to purchase their unit. About half of all states have revised statutes, referred to here as "second-generation" laws. Nevertheless, conversion-related measures still constitute only a minor portion of most state condominium law.

However, legislation has evolved rather rapidly for those states and communities that have gained experience with the conversion phenomenon. States have begun to expand tenant protections; the 90-day notice of conversion in Virginia was expanded to 180 days in its 1980 revised condominium law, and a few states have further expanded this provision. States continue to upgrade tenant first refusal provisions and some include the right to quiet enjoyment, but the thrust of state legislation remains consumer protection.

Many states set requirements for developers to have the buildings inspected, either by independent architects or engineers, or by state or local building inspectors. Local codes must be met or provisions made for compliance. Detailed reports of the condition, estimated life, and repair cost for major systems must be provided to prospective purchasers in 19 states. Nine of these states provide for a state agency to review this information. Some states have also begun to require specific warranties for converted buildings, as well as defining the nature and obligations of express and implied warranties. Local ordinances, in contrast, have tended to focus on tenants' rights and the protection of rental housing.

- Some communities in different parts of the country have used moratoria to halt conversions while studies were conducted and permanent legislation prepared.

- More sophisticated notice provisions, rights of first refusal, and rights to quiet enjoyment were established in some places, and special protections for the elderly, handicapped, and low income households were also enacted.

- Some communities, particularly those with high levels of conversion, restricted conversions altogether by tying permission to convert to rental vacancy rates or to an established percentage of tenants who agree to purchase units in the converted building.

Most state and local regulation applies only to condominiums; those which include cooperatives usually have similar protections for both. While the vast majority of cooperative housing in the United States in located in New York (95%), several other states have some activity, notably California, Florida, Illinois and the District of Columbia. Although cooperative regulations parallel those for condominiums, the impetus for enacting legislation covering cooperative conversions in California and several municipalities often came about only after developers had shifted away from heavily-regulated condominium conversions toward less-regulated cooperative conversions.

Local regulation operates within the framework of state law. The impact of intergovernmental relations on conversion law is discussed on pages 14-17. It should be noted here that local regulations have increasingly come to reflect state action in this field. However, some local jurisdictions go beyond state state law in two major respects.

- Local governments have assumed responsibility where' states have not passed "second-generation" laws. Even where such laws exist, some localities are permitted to go beyond state provisions, especially in matters of tenant protection.

- Localities have taken the initiative in the newer forms of conversion regulation, particularly relocation assistance, tenant approval criteria, and rental stock protection, since state laws are just beginning to address these areas.

The most recent developments in local ordinances appear to be negotiated conversions, whereby developers may be permitted to convert only by meeting extensive conditions to mitigate the displacement of current tenants and to reduce the adverse impact of conversions on the housing market.

Not all conversion legislation has followed this history. New York City, in particular, developed a comprehensive system of regulation in response to the conversion of rental housing to cooperatives after World War II. Faced with the potential loss of many of the City's desirable apartments through cooperative conversions, authorities charged with administration of the rent control program issued regulations to govern the process. By 1960, the New York Attorney General's Office had assumed jurisdiction of cooperative conversions, under statutory amendments to the General Business Law, which resembled state laws governing the offering of securities. This jurisdiction, in turn, was rapidly expanded to cover condominiums and homeowner associations. Gradually, an elaborate set of disclosure requirements evolved that included both a filing with the Attorney General's Office and publication of an "Offering Plan" for prospective unit purchasers (whether tenants in occupancy or third parties). Since 1960, conversion regulation has undergone extensive analysis and refinement via legislative, judicial, and administrative pronouncements. Consequently, the disclosure requirements and tenant protection measures currently found in New York State and especially in New York City 3/ are generally recognized as some of the most comprehensive in the nation.

3/ As of 1979, conversions in New York City are regulated by what is commonly referred to as the Lehner-Flynn law (chapter 135 of the Laws of 1979 for the State of New York), as well as by the Rent Stabilization Law and Code and the New York City Rent and Rehabilitation Law. To mitigate the displacement of nonpurchasing tenants in converting buildings, the law requires that at least 35 percent of a building's tenants consent to purchase units before the developer may evict non-purchasing tenants. This conversion method is called an "eviction" plan. A developer may alternatively issue a "non-eviction" plan, whereby those tenants who do not wish to purchase may remain in the converting building as renters. No minimum percentage of tenant purchasers is required under a "non-eviction" plan in New York City. The special protections granted to elderly tenants (62 years or older, and spouse, regardless of age) under the New York City ordinance insure that their renter status is preserved indefinitely if their annual household income is under $50,000, and if they have lived in the converting building for at least two years prior to the conversion. This provision amounts to a lifetime lease for the elderly who meet the law's eligibility criteria. "Eligible handicapped persons" are also granted lifetime leases in New York City. See page 38 for further discussion of lifetime leases.

TYPES OF REGULATION

Conversion regulations can be separated into several categories: tenant protections; tenant controls over conversion; special group tenant protections; rental stock protections; and buyer protections. Each category is defined below; then, each is further described in Part II, which begins on page 22.

A. Tenant Protections

Tenant protections are the most characteristic elements of conversion regulation. As the number of conversions increased rapidly in the early and mid-1970s, the real or anticipated problems of displacement led to the development of tenants' rights ranging from minimum notice of eviction to lifetime tenancies with controlled rent. While a growing number of states are legislating to increase tenant protections in conversions, the most extensive regulation to date is generally found at the local level. The nature of the local government response seems to have depended upon the extent of conversion, the characteristics of the rental market, the influence of tenant organizations, and the existing tenants' rights laws in the area. The goal of the protective legislation is to mitigate the problems faced by non-purchasing tenants of converting buildings, where the concern is that tenants are unaware of the impending conversion until the units are put on the market, at which time they face the sudden choice of purchasing their unit or moving. Short notice would exacerbate the problem of locating new housing, and cause fear and anxiety among people (particularly the elderly) who had not anticipated a move. The legislative response to this concern is the notice provision, requiring developers to provide several months warning of the intended conversion, thereby giving tenants some minimum time to weigh their alternatives and seek other housing if necessary.

1. "Notice" remains the basic element of tenant protection. It creates a period of minimum occupancy for the tenants, during which time they may not be evicted, except for cause. However, notice provisions do not necessarily specify a date by which the tenant must vacate; in practice, the notice period may be considerably longer than that specified in the legislation. At both the state and local level, most statutes require a notice of conversion which guarantees the tenant the right to occupy the unit for periods ranging from 60 days to several years, although 120 days is the most common. Tenants may maintain occupancy until the end of the notice period, or the end of an existing lease, whichever is longer. In general, tenants who elect to remain past an existing lease to the end of the notice period are considered to have extended their lease, but probably would be free to vacate on 30 days notice if they wished. Some laws allow tenants to break their leases without penalty after notice has been given so that they are free to move whenever they locate housing.

The question of when the notice must be given to tenants is often not addressed in the legislation. However, since the conversion process is usually lengthy, the point at which tenants receive the notice may make considerable difference in its effective length. If the tenants receive 120 days notice near the end of the conversion process, it is more likely that they will have only that period of continued occupancy. However, if the notice is given very early in the process, tenants may be allowed to remain considerably longer than the notice period, since developers generally prefer to keep a building occupied for as long as possible. Some ordinances do anchor the notice by specifying a particular point in the conversion process at which developers must give notice. Some require both an early notice of intent to convert and a regular notice of conversion prior to the date by which tenants must vacate. Other ordinances require developers to keep tenants apprised of the conversion timetable so that they are aware of the date by which they must purchase or vacate.

Another concern sometimes raised regarding tenants is that some people may move from a converting building into another which converts shortly thereafter. Many ordinances require developers to warn prospective tenants of an ongoing conversion, particularly since tenants who enter leases (usually month-to-month) after the conversion has been offered often do not receive the same protections guaranteed tenants who resided in the building prior to conversion.

2. The "right of first refusal" nearly always accompanies tenant notification in conversion regulations. This provision allows tenants, and occasionally subtenants, some time period during which they have an exclusive right to purchase their own, or sometimes another, unit in the converting building. This right guarantees the option of purchasing and gives tenants a legally prescribed period to make this decision. Right of first refusal periods range from 30 to 180 days, with 60 and 90 day periods being the most common. The first refusal period may be concurrent with the notice of conversion, or may begin at some point after the notice period, thus effectively extending the notice period. The legal requirement for a right of first refusal is seldom controversial, since developers in general prefer to sell to tenants, and they almost always offer discounts to tenants. Similarly, measures which specify that developers may not offer the unit on better terms for a specified period after granting tenants first refusal rights appear to be designed to prevent discrimination against particular buyers rather than tenants in general. Some provisions require that a tenant must receive a full disclosure package at the time the notice of the right of first refusal is given so that the tenant can intelligently exercise his/her option to purchase.

3. The tenant's "right to quiet enjoyment," when it is included in legislation, adddresses different problems. First, tenants are protected from harrassment such as intrusive remodelling or the showing of the apartment to prospective purchasers. Second, non-purchasing tenants may be protected from tactics such as rent increases designed to force them out of occupancy.

4. Another provision sometimes provided to tenants is relocation assistance. Such assistance is less common than the other tenant protections. Relocation assistance ranges from non-monetary assistance such as information on available rentals and transportation for apartment hunting, to moving expenses, relocation benefits, and even rental subsidies. Very few states require relocation assistance at this time; localities are more likely to require it, and their ordinances have widely varying provisions. In some cases, the assistance is restricted to low-and moderate-income tenants, while in others it is available to all tenants. The assistance may be the amount of actual moving expenses, or a flat sum based on the statutory formula. The relocation assistance is nearly always the responsibility of the developer, although local agencies may offer assistance with relocation, and state or local agencies may oversee the process.

B. Tenant Controls Over Conversion

Basic tenant protections generally treat the conversion as an accomplished fact and are directed toward mitigating its adverse effects on tenants. However, some jurisdictions usually those with extensive tenant protections, have measures designed to give tenants some control over the initial decision to convert and to minimize displacement. One method is to require a certain percentage of tenants to agree to the conversion and/or agree to purchase their unit in the converted condominium. If the percentage required for conversion is high enough, this requirement may slow or even halt conversions, depending on the circumstances. Such a requirement could stop the conversion of a building mostly tenanted by residents who do not wish purchase and are reluctant to relocate.

However, developers may be able to attain the required percentage of approval by "warehousing," or stockpiling vacant apartments unless there are specific prohibitions against such tactics as in New York City. 4/ Developers may also offer tenants inducements to approve the conversion, such as relocation assistance or long-term leases for non-purchasing tenants, and discounts or financing assistance for tenant purchasers.

4/ The New York City law has an anti-warehousing provision that prohibits the stockpiling of vacant apartments. Towns and villages in three surrounding metropolitan counties (Nassau, Westchester and Rockland) may enact this provision by local option. In El Cerrito, California, under a proposed condominium conversion ordinance before the City Council, a landlord's request to convert a building may be denied if the planning commission or City Council determines that the building owner has intentionally driven up the vacancy rate in preparation for a conversion.

Another, less common, way to provide tenants with control over conversion is the tenant group's right of first refusal. 5/ This provision is designed to give the building's tenants time to organize and gather the financial resources to purchase the building. The intent is to permit tenants to convert the building themselves, possibly to a cooperative, on the assumption that this will result in lower prices and more flexible arrangements for tenants for leasing or buy-buying the units. These group protection measures are very new and largely untried.

C. Special Group Tenant Protections

The problems faced by particular groups of tenants are often a major concern for communities with conversion legislation. The elderly and and handicapped are the groups most often granted special protection. It is usually argued that moving is difficult and financially burdensome for such persons, and that it is more difficult for them to find suitable housing. A few localities consider the needs of families with minor children, who may also find it difficult to find alternative housing, and who may be reluctant to interrupt a school year. Low- and moderate-income households may also be entitled to special protections, particularly in relation to the expense of moving. A few communities guarantee special protections to all elderly or handicapped persons, and/or families with children; others only to those tenants who are both in a protected group and who meet low- and moderate-income guidelines.

Special protections have been primarily local initiatives until recently. Since 1980, however, several states have passed protection provisions for these special groups.

5/ A Washington, D.C. ordinance grants the tenants' organization the the collective right of first refusal to purchase a converting building. In order to contract with an owner for sale of the building, the tenants' organization must: have the legal capacity to hold real property; elect officers; adopt bylaws; and file articles of incorporation. The ordinance also mandates that the owner afford the tenants' organization a "reasonable period" to negotiate a contract of sale (not less than 120 days). If the tenants organization is formed for the purpose of converting the building to a non-profit cooperative (in which the maximum share value is limited to the annual rate of inflation), the owner is required to extend the minimum time between the date of contract and settlement from 120 days to 180 days.

1. By far the most common special group protection at both state and local levels is an extended "right to occupancy" for the protected groups. This right most often applies only to the elderly and handicapped. It is generally included in the notice provision, and ranges from an additional 60 days' notice to an extended occupancy of up to ten years. Only a few localities provide for lifetime leases, which are the most comprehensive form of special protection 6/. Additional or unlimited time to decide whether to extend a lease under the notice provision, or to decide to purchase may be part of the special protections. A few areas specify that protected tenants, primarily families, may not be required to vacate during a school term. In addition to lease extensions, some laws require that the developer provide relocation assistance to non-purchasing tenants, especially to those in protected groups. This is accomplished by restricting its availability to protected tenants only, or by providing additional forms of relocation aid to protected groups. Many examples of the range of tenant protections are provided in the second part of this report.

D. Rental Stock Protections

Some communities, primarily in California, have developed provisions designed to protect their rental stock and/or low- and moderate-income housing. Such provisions address tenant concerns in a broader fashion than individual tenant protections. Rental stock protection measures seek not only to meet the needs of present tenants, but also consider those of future tenants and the community. Conversions are restricted or prohibited in order to maintain a supply of affordable housing for all economic segments of the community. Tenants in communities with very low vacancy rates would be more likely than others to have difficulty locating alternative housing despite their receiving notice of the conversion and relocation assistance. Thus, some localities have enacted legislation which addresses the phenomenon of the conversion itself rather than just its effects on tenants in the converting building.

6/ Among the cities that grant lifetime leases to the elderly and/or handicapped are: San Francisco; Oakland; New York City and Washington, D.C.

1. Perhaps the most common method of controlling conversions is the vacancy rate minimum. Communities that use this method set a vacancy rate, usually of three to six percent, and prohibit conversions while rental vacancies remain below that level. In certain communities, this has amounted to a ban on conversion. Other areas set flat numerical quotas for conversion whereby an annual number of conversions is permitted as specified in the ordinance. Still others require developers to create or "borrow" new construction of rental units to replace units "lost" to conversion. A fourth method is to establish discretionary criteria, whereby local governments may permit conversions depending upon local conditions and the developers' ability to mitigate the adverse effects of the conversion for tenants and the community. Tenant approval or agreement to purchase may be used instead of, or in addition to, the methods described above.

   A very small number of communities have adopted provisions which seek to preserve or enhance the supply of low- and moderate-income housing. While benefitting individual low- and moderate-income households in conversions, the focus of these measures is the future availability of low- and moderate-income housing opportunities. Under these ordinances, converters may be required to set aside a specific number of units for low- and moderate-income rental or home ownership, provide low- and moderate-income units in a new construction project, or contribute to a public fund which furthers low- and moderate-income housing opportunities.

E. Buyer Protections

In addition to tenant-oriented protections, there are regulations which address the concerns of unit purchasers. Buyer protection provisions for conversions are basically amendments to the "first-generation" condominium laws that were enacted to cover newly-built condominiums. Buyer protection measures in second-generation condominium laws have been directed at providing substantive consumer rights and ensuring that condominium buyers have relevant and accurate information on various aspects of the project and unit. These statutes have also tried to include a number of disclosure provisions in response to the unique concerns of conversion purchasers. However, conversions differ from new condominiums in that some are old buildings which can present structural or other problems for future owners. The buildings may not be up to local codes; cosmetic rehabilitation may conceal structural deterioration; and structures which are otherwise sound are more likely to have components nearing the end of their useful lives. Whereas new units may be covered under manufacturer's or developer's warranties, older buildings seldom receive such protection unless specifically required by conversion statutes.

1. The primary protection for purchasers of converted units is the disclosure of information on the condition of the building. The offering materials for both new and converted units generally must specify the responsibilities and bylaws of the homeowner's association; describe the condominium and the schedule of completion; and provide a budget, including a statement of the reserve fund or lack thereof. For conversions, the regulations basically add the requirement of a property report. Such reports typically include: the status of compliance with local codes; a report on the condition, estimated useful life, and cost to repair major components; and an actual and proposed budget statement. These reports sometimes must be verified by an independent architect or engineer, and some "second-generation" laws require their review by an appropriate state or local agency.

2. The information disclosed to prospective purchasers serves two purposes: it offers consumers the facts upon which to base a decision to purchase; and it may establish the conditions of sale. The consumer's best interests are served by obtaining accurate and reliable information about the condominium. It is also in the best interests of the developer to provide accurate information, since it may limit his/her liability for the property. Actual warranties for components of converted buildings are not common. Where warranties are required, developers may be responsible for major components such as the heating, electrical and plumbing systems, roofs, and elevators, for a period ranging from one to three years. Often these warranties must be backed by escrow funds or surety bonds which are usually separate from the reserve fund managed by the homeowner's association. In some cases, the individual units may also be covered under a limited warranty. The approach taken by the Uniform Condominium Act and some existing laws is to establish the conditions of express and implied warranties. Express warranties are all promises, models, or descriptions of the condominium; these must be met by the developer. There is also an implied warranty that the unit will be in good condition and free of defective materials.

3. One other type of consumer protection is the right to cancel a sales agreement or contract within a specified period. Such "cooling off" periods are designed to prevent consumers from making hasty decisions, particularly those made under sales pressure or without full information. Some cooling off periods apply only when full disclosure has not been made prior to the closing of the sale.

INTERGOVERNMENTAL ASPECTS OF REGULATIONS

The question of whether state law pre-empts local regulation is still largely an unsettled issue. Local ordinances were often passed on an emergency basis, particularly when conversions began to increase in volume in the early 1970s. Conversion legislation was usually carried out under the police powers delegated to local governments. These ordinances usually proclaimed a housing emergency -- a condition which is detrimental to the health and welfare of the community -- and, thus, authorized the local government to act in response. Some localities had rent control ordinances in effect, and operated under this authority, sometimes using rent control or eviction control to deal indirectly with conversions. As state statutes were amended to cover conversions, the issue of state preemption arose. No absolute pattern has been established in this relationship. Most local ordinances are in accordance with state laws, or are in states without "secondgeneration" conversion legislation. Depending on the traditional state-local relationship, it seems that local jurisdictions either: a) do not address conversions on the assumption of state preemption, b) have passed ordinances identical to the state law, or c) meet the requirement of state law but specify additional local conditions.

Several different types of local conversion regulations have been subjected to judicial scrutiny. While few state courts of last resort have spoken definitively on the issues, local government enactments concerning conversion have generally been sustained. However, generalizations should be made with caution because different ordinance may present radically different legal issues ranging from home rule to state pre-emption, equal protection, and substantive due process. Moreover, courts in several states have ruled in different directions on these questions. The following summary of the legal issues surrounding conversion is neither exhaustive nor suggestive of the decisions the courts will reach in considering litigation on any given type of ordinance. Instead, it outlines the types of legal arguments, constitutional or otherwise, that are prevalent in such cases and references some of the Supreme Court opinions that may influence future judicial action regarding conversion laws.

A. The State Pre-emption Question. An important question raised in considering conversion litigation is whether or not the state expressly or implicitly prohibits local regulation of condominiums. Since the condominium is a creature of state enabling legislation (like a business corporation), and since the public has an intrest in state-wide uniformity with respect to real property matters. It may be argued that local governments are prohibited from legislating regarding condominiums.

While a few courts have reached this conclusion, most have found that the mere existence of statewide condominium statutes does not compel a finding of state pre-emption of the field. This conclusion is usually buttressed by the observation that the local laws in question supplement, rather than contradict, the statewide enabling legislation.

Of course, where the state legislature reserves to itself the prerogative to legislate in the conversion field, local enactments would be beyond the scope of local authority without question. It should also be noted that the pre-emption question would not normally be raised if the ordinance sought to regulate cooperative conversions, since they are not typically creatures of state statute.

B. The Substantive Due Process Argument. Almost invariably, those contesting the validity of local conversion ordinances argue that such measures deprive the affected property owners (the landlord seeking to convert his apartment building, unit buyers who have contracted to purchase an apartment, or both) of their property without substantive due process of law. Occasionally, such arguments are linked to constitutional issues concerning the impairment of outstanding contractual obligations. Most courts that have considered these questions have concluded that the local regulations or moratoria under review are not so pervasive in scope or duration as to pass the invisible line that separates permissible regulation of property in the public interest from a "taking" (the appropriation of private property for a public purpose without payment of just compensation).

The pronouncements of the United States Supreme Court in the last 20 years indicate that arguments based on deprivation of property without due process are seldom fruitful if the ordinance under review does not deprive the complainant of all reasonable use of his or her property. The Supreme Court's opinion in the landmark preservation case, Penn Central Transportation Company v. New York City, 438 U.S. 104 (1978), is illustrative. In its decision, the Court cited several decisions which affirmed the rights of state and local governments to enact land-use regulations which are "reasonably related to the promotion of the general welfare" of the community and rejected the proposition that diminution in property value, standing alone, establishes a "taking" in violation fo the Fifth and Fourteenth Amendments to the Constitution. Since conversion ordinances usually operate to temporarily control or slow the process of conversion (as opposed to a long-term prohibition against this type of marketing real property), it is extremely difficult to argue the case that a property owner's ability to economically operate or dispose of apartment holdings is being completely frustrated due to local conversion ordinances.

C. Equal Protection Considerations. In several cases that have arisen to date, it was argued that governmental regulation of conversions or moratoria violate the equal protection clause of state and federal constitutions. However, in order for this contention to succeed, the complainant would have to carry the burden of demonstrating that the ordinance under attack lacks a rational foundation and constitutes invidious discrimination. Such an argument might be advanced where the ordinance is directed solely toward condominium conversion (and leaves cooperative conversions wholly unregulated), or where the ordinance is restricted in its operation to certain types of residential real property (as, for example, buildings containing thirty or more units).

However, the courts are prone to grant legislative bodies wide latitude in remedying social problems, and since condominium conversions are the most common type of conversions, a local determination to tackle this form of conversion first (or exclusively) would be difficult to overturn. The same could be argued for ordinances that reach only the larger projects, since their conversion would have the greatest impact upon the perceived evil of tenant displacement in a tight housing market. Finally, the broad scope of the Supreme Court's opinion in Village of Belle Terre v. Boraas, 416 U.S. 1, 94 S. Ct. 1536 (1974), indicates that the "invidious discrimination" argument would probably not impress the members of that Court.

D. Conversion Moratoria and Other Emergency-Based Ordinances. Communities that seek to limit the number of conversions may proceed by declaring that a rental housing "emergency" exists, due, in part, to the sudden upsurge in conversions of residential apartments to condominium status. Thus, by invoking local police power authority to protect the interests of the community, local governments have passed ordinances to impede conversion activity (e.g., by banning or limiting conversions when vacancies are low) or to temporarily halt all conversion activity (by imposing moratoria). The tendency of the courts to sustain local government measures as an exercise of their police power is reinforced by local legislative findings that conversions are adversely affecting the renter population. Most conversion moratoria are of extremely short duration, averaging from 30 days to 6 months. Thus, litigation which challenges the moratoria may be difficult to mount in time, much less succeed. Further, this type of legislation may be difficult to overturn where it is designed as a stop-gap measure to enable the local legislature to study the situation and formulate a reasoned response to the housing problems occasioned by a flurry of residential conversions. The precedents in the area of building permits, sewer and water hook-ups, and other types of stop-gap land-use moratoria indicate a willingness by the courts to sanction short-term moratoria.

In the celebrated case of Golden v. Town of Ramapo, 30 N.Y. 2d 359, 285 N.E. 2d 291, 334 N.Y.S. 2d 138 (1972), the New York Court of Appeals recognized that the planned-growth zoning ordinance at issue would in no event delay development of the property for more than 18 years. Nevertheless, enactment of a prolonged or indefinite moratorium upon condominium conversions, or repeated reenactment of short-term moratoria provisions, would be much more open to attack than a one-time, short-term enactment prohibiting conversions while the local governing body completed deliberations on a permanent plan or regulation.

THE UNIFORM CONDOMINIUM ACT GOVERNING CONVERSIONS

The Uniform Condominium Act (UCA), developed after several years of drafting by the National Conference of Commissioners on Uniform Laws, seeks to unify and modernize the law of condominiums. It was adopted by the National Conference in the summer of 1977 and approved by the American Bar Association in the winter of 1978. The act has been promulgated to every state for consideration. A number of states have the act under active consideration, 7/ with West Virginia being the first state to enact it on February 15, 1980, followed by Minnesota on April 16, 1980, and Pennsylvania on July 2, 1980.

The UCA serves as a model for comprehensive state condominium statutes. It covers the basic conversion-related provisions for tenant and buyer protections, but has no provision for the protection of the rental stock or low- and moderate-income housing. It provides a useful version of the typical condominium law amended to cover conversions, and it is more comprehensive than earlier versions of these laws.

7/ As of August 1980, Louisiana and Georgia have adopted sections of the UCA; Vermont, Illinois, Massachusetts and Missouri rejected the UCA in their 1980 legislative sessions.

The Act seeks to remedy the inadequacies and inflexibility found in the "first-generation" of condominium legislation passed in the 1960s and to meet the need for greater consumer protection. The commentary to the UCA indicates that the section on condominium conversions is substantially based on similar provisions in the condominium statutes of Virginia and the District of Columbia. The UCA is, therefore, likely to serve as the basis for future revisions of condominium law in many states with "first-generation" statutes.[8] Three major aspects of the Uniform Condominium Act relating to conversions are discussed below. They are protections afforded tenants, buyer protections, and limitations on local government authority to regulate condominiums.

A. Tenant Protections Afforded Under the Uniform Condominium Act

The UCA provides tenants in condominium conversions with two principal rights. First, a tenant is given 120 days' notice of conversion, which also may constitute the notice to vacate. Second, in the notice of conversion, a tenant is given a right of first refusal, i.e., the exclusive right to purchase his or her unit before it can be offered for sale to the public.

B. Buyer Protections Afforded Under the Uniform Condominium Act

The UCA adopts a full disclosure scheme for informing the potential purchaser of all aspects of the building and unit. A public offering statement must be prepared and submitted to a review agency (this is optional under the Act) or to the purchaser. The offering statement requires information on the developer and his or her overall plans for the project, the legal documentation, and the projected budget and monthly assessments. The UCA also addresses the purchaser's right to cancel a contract to purchase and any warranties offered or disclaimed.

8/ It should also be noted that adoption of the Uniform Condominium Act by individual state legislatures would not affect conversion to cooperative housing status without the enactment of parallel measures to cover this type of conversion.

The UCA requires several additions to the offering plan in the case of condominium conversions (that shall be occupied for residential use). A statement prepared by an independent architect or engineer must be included, describing the present condition of all structural components and any mechanical and electrical installations material to the use and enjoyment of the condominium. In addition, the UCA requires a statement on the expected useful life of each structural, mechanical, or electrical component, or a statement that no representations are made in that regard. Finally, the public offering must contain a list of any notices of uncorrected building code violations together with the estimated cost to remedy the violations.

C. UCA Limitations on Local Government Authority to Regulate Condominiums

The UCA contains a significant provision pertaining to the authority of local governments to regulate condominiums, including conversions. Under the UCA, local goverrments would be barred from using zoning, subdivision, building codes, or real estate regulation to prohibit the condominium form of ownership or to impose any requirement upon a condominium form of ownership which it would not impose upon a physically identical development under a different form of ownership. In the case of a condominium conversion, this section serves to bar local goverrments from regulating a building in one way for rental use and in another way if it is converted to a condominium. Moreover, the provisions of the UCA supercede those of all local condominium ordinances, unless the state amends the UCA to expressly permit community regulation. In no case may a community reduce the tenant or buyer protection provisions afforded under the UCA.

West Virginia, (the first state to pass the UCA) and Pennsylvania retained the limitations on local government authority to regulate condominiums. However, Minnesota amended this section of the UCA to provide two significant exceptions to the limitations on local government regulations. First, the general prohibition on local government regulation does not apply to the financing of construction, rehabilitations, or purchases of condominiums through programs established by federal or state law and operated by state or local governments. Second, a statutory or home rule charter city may prohibit or impose reasonable conditions upon the conversion of buildings to a condominium form of ownership in two circumstances: the city must have a significant shortage of suitable rental dwellings available to low- and moderate-income individuals or families or, the city must impose such a prohibition or restriction on conversions in order to maintain eligibility for any federal or state housing assistance program. A public hearing must be held before enacting any prohibition or restriction on condominium conversions. Finally, it appears that under both exceptions, any regulation is limited to 18 months duration.

EXTENT OF LOCAL REGULATION

Based on a survey of the nation's local chief exectives, approximately 36 percent of cities/communities with populations over 25,000 have had some amount of conversion activity within their jurisdictions. 9/ Less than one-fifth of these localities have adopted some type of conversion legislation, representing six percent of all communities.

In larger metropolitan areas, however, regulation is more frequent: legislation exists or is pending in 24 of the 47 central cities located in the Nation's 37 largest Standard Metropolitan Statistical Areas. (A detailed review of the conversion ordinances in these SMSA's is found on page 41.)

The propensity for a particular local government to enact a conversion-related ordinance appears to vary with: the level and nature of conversion activity experienced within the community; the kind and degree of community response to it; action, if any, taken by state governments that affect conversions; and the particular local government's legal authority to legislate in this area. Local governments, therefore, may vary considerably in their response, both qualitatively and quantitatively, to conversions.

9/ The Survey of Local Chief Executives conducted for The Conversion of Rental Housing to Condominiums and Cooperatives, op. cit., measured the extent to which localities have enacted conversion ordinances. During this survey, a sample of 453 local chief executives were interviewed between December 1979 and January 1980. This sample was drawn from all communities with a 1970 population of 25,000 or more, and represents 77 percent of the 1970 national population. Furthermore, it includes close to 100 percent of all communities with any conversion activity as of 1980.

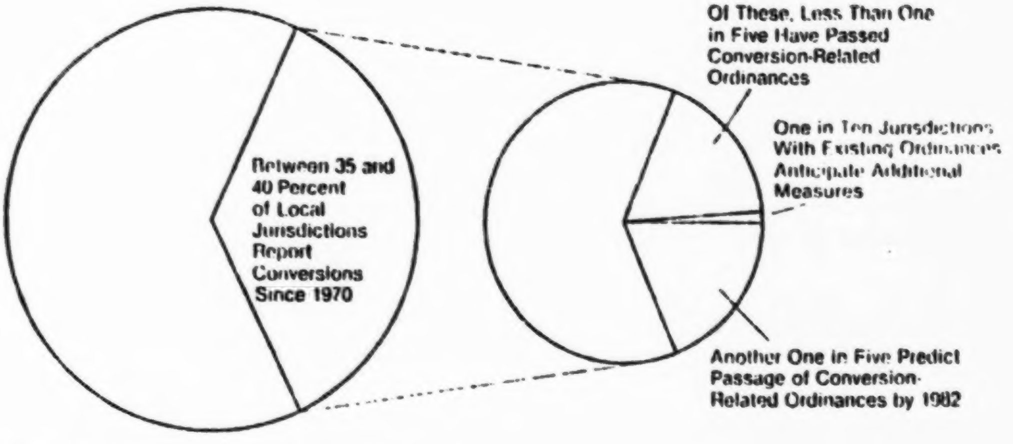
Future Regulations by Local Governments

In addition to communities which have already enacted conversion ordinances, an additional 20 percent of jurisdictions with conversion activity are likely to enact ordinances in the next two years, according to local chief executives. Furthermore, ten percent of local officials in communities which already have enacted conversion ordinances indicate that additional provisions will probably be passed in the coming years. Expectations of future regulatory ordinances are found in roughly the same proportion in all regions of the country and in communities of varying sizes with varying amounts of conversion activity. Although many local officials may not personally favor the enactment of local laws to regulate conversions, they anticipate that mounting pressure will contribute to the continued growth of conversion regulation in the future.

The issues discussed above are explored more fully in the second part of this report, where examples of the state and local laws that regulate conversions in many areas are presented.

Exhibit 1.

Local Enactment of Conversion Ordinances



Based on a National Telephone Survey of Local Officials

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PART II - CONVERSION REGULATIONS

The following part describes, in detail, the various provisions of condominium law which relate to conversions. Data on the national incidence of these provisions are from the survey of local chief executives. 10/ Examples from state law and local ordinances are used to highlight the most significant variations among the laws. 11/ Most state statutes are discussed, but the examples, (particularly of local laws) are meant to be descriptive and not exhaustive. Tenant protections, including notice, the right of first refusal, the right to quiet enjoyment, and relocation assistance are described. A separate section addresses the special provisions that have been established for the elderly, handicapped, and other targeted groups. A variety of community measures, including moratoria, to protect the rental stock and to preserve an adequate supply of low- and moderate-income housing are discussed in detail, since such provisions are less common. Finally, buyer protections, particularly property reports, full disclosure, warranties, and the right to cancel sales contracts, are discussed.

TENANT PROTECTIONS

1) Notice

Giving tenants notice of the intent to convert is the most significant tenant protection offered. It is also the most common; all of the states which have tenant protection measures require notice. According to the Local Chief Executive Survey, 75 percent of the local jurisdictions which have conversion ordinances require giving notice to tenants. At the state level, the notice periods range

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10/ See the Survey of Local Chief Executives, conducted for The Conversion of Rental Housing to Condominiums and Cooperatives, Appendix 2, Chapter IV, op. cit.

11/ Twenty-one State Statutes and 54 local ordinances were reviewed for analysis. See Ibid., Chapters XI and XIII.

from 60 days to one year for all tenants;12/ among the localities whose ordinances have been reviewed, the range is from 90 days to one year for all tenants.13/ The most common length for the notice period is 120 days. Since most of the states which require notice specify 120 days, it is not surprising that over half of the local jurisdictions surveyed also require 120 days. 14/

The variations in tenant notification procedures provide interesting examples of ways to extend tenancies to address the concerns of a particular jurisdiction. Exhibit 2 displays the range and combinations of tenant protections offered at the state level. New Jersey delays eviction by requiring, in addition to a 60 day notice of intent to convert, a three-year notice of eviction, and provides for court-ordered stays of eviction after that period. Connecticut's statute states that if a tenant cannot secure suitable premises in a reasonably comparable neighborhood after searching with due "diligence," the court may grant a stay of the eviction for up to six months. The court may further grant an additional six months based on the age of the applicant, the size of the applicant's family, the length of tenancy, and the availability of suitable alternative housing.

In Florida, a tenant who has been a resident of the building for 6 months or more prior to the notice of intent to convert may extend his or her lease for 270 days. A tenant who has been a resident for less than six months prior to the notice may extend his or her lease for 180 days. In both cases, the tenant must notify the developer of his election to extend the lease within 45 days of the notice of intent to convert. Tenants whose leases expire within 45 days may choose to remain (with written notice) for that 45 day period

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12/ Breakdowns by state are as follows: (1) 60 days--Tennessee and New Jersey; (2) 90 days--Colorado, New Hampshire, Oregon, and Hawaii, Virginia; (3) 120 days--Arizona, Illinois (before filing of the condominium declaration), Michigan, Minnesota, Ohio, West Virginia, and Wisconsin; (4) 180 days--Connecticut, Maryland; California, and (5) 270 days-- Florida; (6) one year--Pennsylvania.

13/ Most local jurisdictions, following the pattern of state statutes, require 120 days notice. Some variations are: Denver, Colorado and University City, Missouri require only 90 days; Montgomery County, Maryland, Webster Grove, Missouri, 180 days; Boston, Massachusetts and Mountain View, California, one year.

14/ Fifty-four percent require 120 days, according to The Local Chief Executive Survey.

Exhibit 2

State Statutes Affording Protection to Tenants in Condominium and Cooperative Conversions †

	Notice of Intent to Convert/Minimum Occupancy (in Days)	Tenant Right to First Refusal (In Days)	Right to Quiet Enjoyment	Relocation Assistance	Other
Alabama					
Alaska					
Arkansas					
Arizona	120	30	X		
California	180	90		X	X[4]
Colorado	90			X	
Connecticut	180	90		X	X[6] X[7]
Delaware					
Florida	180-270	90		X	X[7]
Georgia	120	60			
Hawaii	90				
Idaho					
Illinois	120	120	X		
Indiana					
Iowa					
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland	180				X[7]
Massachusetts					
Michigan	120-360				
Minnesota*	120	60			X[7]
Mississippi			X		
Missouri					
Montana					
Nebraska					
Nevada					
New Hampshire	90	60			
New Jersey	60[1]	90	X	X	
New Mexico					
New York	*[2]	*[2]	X		X[6]
North Carolina					
North Dakota					
Ohio	120	90			
Oklahoma					
Oregon	90[3]	30	X		
Pennsylvania	360	180			X[7] X[8]
Rhode Island					
South Carolina					
South Dakota					
Tennessee	60			X	
Texas					
Utah					
Vermont					
Virginia	160	180			
Washington					
West Virginia*	120	60			
Wisconsin	120	60			X[7]
Wyoming					
Uniform Condominium Act	120	60			X[7]

†Most state protections apply only to condominiums.

*Uniform Condominium Act with amendments.

[1] Notice precedes 3-year notice of intent to institute eviction proceedings.

[2] Notice varies for rent control and rent stabilization housing.

[3] Does not constitute or include notice to terminate tenancy.

[4] 10-day notice of optional public hearing.

[5] Prohibits retaliatory eviction for failure to purchase.

[6] Prohibits stockpiling empty apartments, tenant harassment, etc.

[7] Right to cancel lease.

[8] Requires public hearing 30 days before notice.

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in order to decide whether or not to extend their rental agreement for the 180- or 270-day period. Further, Florida's law provides that a county may further extend the tenant's right to stay for an additional 90 days for both tenants in residence for six months or more (a total of 360 days) and for tenants in residence less than six months (a total of 270 days), if a county finds that there is a three percent or less vacancy rate. A municipality in the county may subsequently vote not to have the 90-day extension apply within its boundaries.

California has recently expanded its system of notice requirements concerning various stages of local and state government approvals of conversions. Converters are required to provide written notice of intent to convert 60 days prior to the filing of an application with the local government for a Tentative Map approval. This notice must also be provided to all prospective tenants. Each tenant is to receive 10 days written notice of the local government's Tentative Map hearing. Any staff reports or recommendations on the proposed conversion are to be provided to each tenant at least 3 days prior to the hearing. In addition, each tenant is to receive written notification within 10 days of the local government's final approval (Final Map) of the conversion. Finally, the new law requires that tenants receive notification of the converter's filing for a public report with the state's Department of Real Estate.

Among the other provisions related to notice, the right to cancel an existing lease upon finding suitable housing usually requires 30 days notice to the developer, although this varies.15/ On the other

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15/ The right to cancel is required by Arizona, Connecticut, Maryland, Pennsylvania and Minnesota, and such localities as Cupertino, Garden Grove, Oakland, Palo Alto, Montgomery County, San Francisco, Skokie, upon 30 days notice. Orange County only requires 15 days notice to the landlord by any tenant. Lakewood and Lyndhurst grant the right to cancel, with 45 days written notice, to anyone whose tenancy expires after the 90 days notice of conversion. Evanston and Webster Grove, Missouri require 60 days notice. In addition, Webster Grove stipulates that anyone who receives a notice of conversion within 30 days of signing a lease has 15 days to serve a 15-day notice of intent to vacate. Everett and Seattle require the most notice, 120 days, prior to vacating.

side of the issue, developers may be able to terminate post-conversion tenants with much less notice than that given to prior residents, but often only if prospective tenants have been warned of the ongoing conversion. 16/

2) Right of First Refusal

The right of first refusal describes an exclusive option for the tenant to purchase his/her unit within a specified period of time. This period generally ranges from 30 to 120 days. 17/ It may be tied to the notice of conversion, often running concurrently, but sometimes not beginning until after the end of the notice period. In some cases, the right of first refusal partially sets the period of minimum occupancy, as in Arizona, which provides a 30 day right

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16/ Connecticut allows termination of such leases on 30 days notice. Florida allows termination on 60 days notice if the landlord's right in this regard is conspicuously disclosed in the lease. New Jersey provides that a statement of intention to convert must be provided for tenancies begun after the condominium master deed has been filed. If this notice is given, these tenancies can be terminated on 60 days notice; if not, the tenants have a right to the regular 3-year notice. In New York, 90 days notice of termination provisions may be inserted in new or renewal leases of "rent stabilized" apartments, from and after the date that the first draft of the conversion offering plan is distributed to tenants and filed with the appropriate governmental agencies.

17/ In Oregon, it is 30 days after notice of intent to convert; in Wisconsin and Virginia, it is 60 days after notice to vacate and in California it is at least 90 days after issuance of the final Subdivision Public Report; in Connecticut and New Jersey, it is 90 days from notice of intent to convert, and in Ohio, 90 days from notice to vacate. Arizona provides a 30 day period which can be given during or after the notice of intent period. In Florida, the right to first purchase lasts 45 days from the receipt of all mandated purchaser information on the housing market, financing, and tax system. New York statutes and regulations require that each tenant in occupancy be given a 90 day exclusive right to purchase. Pennsylvania and Virginia both require 180 day rights of first refusal.

of first refusal which may be given during or after the 120 day notice period, but which guarantees another 90 day period of minimum occupancy. Thus, a concurrent notice would provide only a minimum 120 day occupancy, but later offers of sale would extend the tenant's occupancy beyond 120 days.

Minnesota is the only state which prohibits discrimination based on the age of the lease holder or any resident when offering the right of first refusal. Florida is the only state to limit the right of first refusal to tenants who were in occupancy at least six months prior to the notice of intent to convert. Florida also stipulates that if a tenant informational package is not provided within 90 days of the notice of intent to convert, the notice period is extended one day for each day the report is late, unless the tenant waives this extension in writing.

Some ordinances provide secondary periods during which subtenants may exercise the right of first refusal if the tenant has not. The Washington, D.C. conversion ordinance provides that the tenant has a right of first refusal for the first 60 days. If the tenant does not exercise this right, any subtenant may exercise it during the succeeding 60 days. The D.C. ordinance contains the caveat that both the tenant and the subtenant must be in compliance with the lease, and the unit must be retained without substantial alteration. Everett, King County, and Seattle, Washington provide subtenants a right to first purchase.

Several ordinances prohibit the developer from offering the unit on more favorable terms for a certain period after rejection by the tenant, and may grant the tenant an additional period to consider any new offer. Atlanta prohibits better offers for 120 days, Minneapolis for 180 days, and King County for one year. Evanston prohibits better offers for 180 days, without offering those terms first to the tenant. Lakewood and Lyndhurst, Ohio have a similar provision for 90 days and ten additional days to consider a new offer.

3) Right of Quiet Enjoyment

Some jurisdictions have taken steps to prevent the harrassment of tenants in converting buildings, stipulating that peaceful enjoyment of the premises, including common areas, is not to be interrupted by unreasonable noise or construction activity. Minnesota also prohibits repairs or remodeling during the notice period unless "reasonable precautions" are taken to ensure tenant safety and security.

Other measures may prevent or restrict the developer from showing the apartment to prospective purchasers. Illinois, for example, limits such showings to a reasonable number of times, at appropriate hours and then only during the last 90 days of an expiring tenancy. Chicago's ordinance provides that no occupied unit can be shown to third parties for 30 days after the tenant receives notice of the owner's intent to record the condominium documents. The New Jersey statute provides that, during the first 90 days after notice of intent to convert, the unit may not be shown to a third party unless the tenant has, in writing, waived his or her right to purchase. Oregon mandates that a tenant's dwelling unit may not be shown to a prospective purchaser without the tenant's permission unless tenancy has been terminated. Lakewood and Lyndhurst state that the tenant shall not unreasonably withhold consent from the developer to enter a unit to inspect or make repairs, or to show it to third parties, but condition this provision by defining entry by the landlord more than twice within a seven day period as an "abuse of the right of access."

4) Rights of Post-Conversion Tenants

Some measures address the needs of tenants who are entitled to remain after the conversion. New York statutes, for instance, contain provisions which require that after the conversion is completed, the non-purchasing tenants must be serviced by the same managing agent who services the apartment purchasers and that the pre-conversion level of services must be maintained. Other jurisdictions have prohibited rent increases for tenants, particularly long term tenants, or held such increases to various limits. Everett and King County, Washington forbid rent increases during the 120 day notice period. Oakland forbids any increase after the date the notice of conversion is given, for as long as 12 months after the date the tentative map is filed. San Francisco prohibits any increase between filing and relocation, up to a maximum of one year. One of the longest bans on rent increases is found in the Walnut Creek, California ordinance, which prohibits rent increases for two years measured from the time of the application to convert until the unit is sold (or until the application is withdrawn). In Beachwood, Ohio the rent of existing tenants cannot be raised more than the average increase in the Consumer Price Index over the previous 12 months. The Mercer Island, Washington conversion ordinance states that during the 120-day notice period, rent levels cannot exceed 110 percent of the average monthly rent collected in the 12 months prior to the notice of conversion.

Still other ordinances expressly prohibit retaliation against non-purchasing tenants. While it is clear that a tenant may not be evicted without good or just cause during any notice period contained in a particular conversion ordinance, some measures (King County and Seattle) contain an explicit statement to this effect. In addition, these ordinances forbid the sale of any unit if, in the proceeding 150 day period, any tenant has been evicted without good cause.

The Connecticut statute provides that, where a written lease exists, there can be no retaliatory eviction because a tenant refuses to purchase an apartment. The various New York statutes governing the conversion to condominium or cooperative status contain several provisions of a similar nature. Among other things, these statutes prohibit the "warehousing" or stockpiling of empty apartments; harassment of tenants to induce them to purchase or move; and reduction of services during or following the conversion process.

Mountain View and Oceanside, California both prohibit any kind of retaliation against tenants who oppose the conversion. Oceanside's ordinance also states that a tenant cannot waive any protection provision contained in the ordinance.

5) Relocation Assistance

Relocation assistance, ranging from the payment of moving expenses and help in locating a new apartment to rental subsidies, is designed to offset the cost and effort involved in moving faced by tenants who choose not to purchase converted units.

A few states require developers to pay moving expenses or establish a relocation assistance program. Three states permit the developer to terminate or shorten the notice period by paying moving expenses or other agreed-upon consideration. Colorado state law allows a developer, with the tenant's consent, to terminate the tenancy in less than the 90-day minimum, if the developer pays all moving expenses or other agreed-upon considerations. A Tennessee statute mandates that if the owner converts without giving tenants two months' actual notice, the occupants may choose to vacate immediately upon receiving a belated notice, and the owner must then pay all reasonable moving expenses. However, if a tenant is in a position to make this choice and does not vacate the premises immediately, relocation assistance payments which are not directly tied to moving the owner is not obligated to pay moving expenses. Florida permits developers to offer tenants entitled to 270 days notice the option of accepting 120 days notice plus one month's rent for moving expenses.

Connecticut mandates that low-income tenants must receive moving and relocation expenses equal to one month's rent, or up to $500 (as determined by local government). Connecticut also requires a converter to provide nonpurchasing tenants with relocation assistance which includes information on the availability of alternative housing, financing programs, and federal, state, and municipal housing assistance. Connecticut limits moving and relocation benefits to households with incomes of less than 175 percent of the Federal Community Services Administration poverty guidelines for nonfarm recipients.

The State of New Jersey has developed an integrated set of tenant protections and assistance involving moving expenses, relocation assistance, and long-term eviction stays. Specifically, the statute provides that preconversion tenants who are evicted or who leave because of the conversion shall receive moving expense compensation equal to one month's rent. The statute also provides for relocation services: tenants in occupancy prior to the recording of the master deed (who received the three year notice) have a right for 18 months to demand that the landlord offer them a "reasonable opportunity" to examine and rent "comparable housing." The New Jersey statute specifically defines "reasonable opportunity" and "comparable housing" and stipulates that a landlord must prove that these requirements were met before eviction proceedings can begin. If a landlord cannot prove this, the court may authorize up to five one-year stays of eviction (with reasonable rent increases), until it is satisfied the tenant has been offered the statutory benefits. If, after at least one such stay has been authorized, the owner gives the tenant "hardship relocation assistance" equal to a waiver of five months' rent, the court cannot authorize any further stays.

Among local ordinances, those jurisdictions which require the developer to make relocation assistance payments may specify that moving expenses are to be paid; either the actual moving costs subject to a maximum, or some set amount, usually in addition to other forms of assistance. Other ordinances may require the developer to make relocation assistance payments that are not directly tied to moving expenses.[18] This amount may be set by the ordinance, or derived from a formula based on monthly rent or other factors.[19]

Some local ordinances limit relocation assistance to elderly or low- to moderate-income tenants, or provide additional benefits for these protected tenants. Los Angeles requires the developer to provide: a list of available rental units within one area; transportation for residents with limited mobility; relocation assistance of $1,000 to all tenants in "non-luxury" units (defined by statute); and $2,500 to the elderly, families with children, and the handicapped. Alternatively, the developer may opt to relocate tenants and pay all necessary costs. Oceanside, California increases the payment from one to two months rent for low-income tenants. Evanston and Skokie, Illinois limit the provision of moving expenses to tenants eligible for or receiving (respectively) HUD Section 8 housing subsidies.

18/ The Maryland Court of Appeals invalidated a Montgomery County law that required building owners to pay $750 in relocation assistance payments to each resident displaced by a conversion. See Rockville Grosvenor Inc. v. Montgomery County, 422 A.2d 353 (1980). Both the governor of Maryland and the Montgomery County Council oppose this Court decision and favor an ordinance with a provision for relocation assistance (which is included in a new bill that was introduced to the state legislature in February 1981.) See footnote 21.

19/ Seattle requires $350 per unit to be paid to any tenant or subtenant who vacates voluntarily or involuntarily. King County requires $350 or two months rent, whichever is greater, to be paid to any tenant vacating after the 120-day notice period. The landlord must also pay the depreciated value of any leasehold improvements made by the vacating tenant. In Everett, Washington, an unusual provision limits assistance (of $350) to any tenant who moves in within 60 days prior to the notice of conversion and is not notified of such conversion. Duarte, California provides a payment equal to one and one-half times the monthly rent, while Walnut Creek stipulates two times the monthly rent. Los Angeles County requires $1,000 be paid each household or, at the tenant's option, the monthly rent multiplied by the number of years the tenant occupied the unit. Oceanside and San Diego mandate payment of one and two months current rent, respectively. Evanston requires the developer to pay actual moving costs, or the higher of $300 or one month's rent. San Francisco requires payment up to $1,000 or an amount fixed by a Relocation Schedule. The District of Columbia requires payment of actual expenses, with a minimum payment of $125 and maximum of $500.

Some municipalities require the developer to formulate relocation assistance plans, either in lieu of, or in addition to, any payment of moving expenses or other cash allowances. The relocation plans are often part of broader tenant assistance programs mandated by the particular ordinance. One frequent requirement is a list of comparable rental housing units available in the immediate area. A few communities require a developer to post security, usually a fixed amount per unit, to provide relocation costs. Several conversion ordinances not only require the developer to provide relocation services, but also mandate that a comprehensive plan be designed to minimize displacement in the first instance. Cupertino, California permits the developer to consider discounts, extended leases and moving allowances in developing a plan to mitigate the effect of insufficient comparable housing accommodations. Oakland requires both a Preliminary and Final Assistance Program designed to minimize displacement as well as to assist tenants in relocating. In Orange County, an application to convert must include a Housing Program which contains a plan to provide affordable housing in the project as well as a relocation plan for displaced tenants.

A few cities offer tenants the services of their own relocation agencies in addition to the developer's efforts. In Washington, D.C., the city's Rental Accommodations Office furnishes information on comparable substitute housing and government housing programs. The developer must also provide tenants with forms to apply for relocation expenses and housing assistance payments.

6) Tenant Groups' Right to Purchase

Provisions for tenant groups' right to first purchase are designed to provide tenants an opportunity to organize and gather the necessary financial resources to purchase their building. The intent of such ordinances is to allow tenants to convert the building themselves, possibly to a cooperative, and to offer lower prices to those tenants than in a developer-sponsored conversion. At this time, such provisions are relatively rare; they are also new and largely untried.

The Washington, D.C. ordinance mandates that the landlord may not sell a building containing five or more units unless the landlord first offers the building to a tenant organization at a bona fide price. Such an organization, in turn, has 120 days within which to negotiate a contract with the landlord for the purchase of the building. If no tenant organization exists, the tenants are given an additional 30 days to form an organization legally capable of owning real estate. No down payment over five percent may be required and settlement must take place within 120 days of contract. These two conditions also apply to the individual tenant's right of first refusal. 20/

Minneapolis requires that the conversion notice state that the tenants may form an organization for the purpose of offering to buy the building. However, the ordinance goes on to specifically disclaim that this creates a right on the part of the tenant organization to purchase such property, nor does it obligate anyone to negotiate with, finance, or sell such property to the tenant's association.

A recent judicial development in the area of a tenant's group right to purchase was illustrated in the case of Rockville Grosvenor v. Montgomery County 422 A.2d 353 (1980), where the Maryland Court of Appeals struck down the law that gave tenants the first right to purchase buildings converting to condominiums. The state's highest court ruled that the county law conflicted with a state law that prohibited imposing unique burdens on condominiums which did not apply to other types of buildings. 21/

7) Tenant Agreement to Purchase

There are a few localities which have expanded tenant protections to provide tenants with some measure of control over the decision to convert. Some communities require a certain percentage of tenants to either approve the conversion in writing or agree to purchase a unit. Tenant approval may be a condition for local approval, or may exempt the project from other statutory requirements.

New York State has the most significant rules regarding this issue. By a combination of statute and administrative regulation, the state mandates that conversion plans in New York City can only proceed if 35 percent of tenants in occupancy sign subscription

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20/ See footnote 5.

21/ A bill was passed unanimously by the Montgomery County Council (February 1981) that affirmed its support for a tenant's group right to purchase. The bill, as re-introduced in 1981, was reworded to expand its coverage of sales for conversion to hotels, office buildings, cooperatives, and for demolition; thus, nullifying the argument made by the State Court of Appeals in its 1980 decision to strike down the county's conversion ordinance.

agreements within a relatively brief period after the plan is accepted for filing by the Attorney General. Special state legislation for the counties of Nassau, Westchester and Rockland authorizes local governments to mandate a minimum 35 percent sale to tenants for an "eviction" plan 22/, as well as a mandatory 15 percent sale to tenants for "non-eviction" plans 23/, if local governments deem it necessary.

Several communities in California also have enacted minimum tenant approval requirements. Newport Beach requires that at least 30 percent of the tenants express written interest in exercising their option to purchase their unit. San Francisco's conversion ordinance states that an application for conversion may not be filed unless 40 percent of the tenants have either signed intent to purchase forms, or indicate that they are eligible for, and interested in, lifetime leases. Those qualifying for lifetime leases are included in the 40 percent needed for conversion. In Palo Alto, when the local rental vacancy rate is 3 percent or less, two-thirds of the tenants must consent to the rental conversion in order for a developer to file an application.

In the District of Columbia, one legislative goal as stated in the conversion ordinance is to provide tenants in converting buildings with a voice in the decision to convert their apartments. 24/ Thus, the ordinance mandates that tenant elections be held to give them an opportunity to vote on the proposed conversion. Over 50 percent of the occupied household units must agree to the conversion before the declarant may proceed. The ordinance also prohibits owners, tenants organizations, or third parties from coercing a household in order to influence its vote on the conversion referendum, and it defines many of the prohibited forms of coercion. 25/

22/ See footnote 3.

23/ Ibid.

24/ "Rental Housing Conversion and Sale Act of 1980," (D.C. Law 3-86).

25/ Coercion includes, but is not limited to: the knowing circulation of inaccurate information; frequent visits or calls over the objection of that household; threat of retaliatory action; an act or threat not otherwise permitted by law which seeks to recover possession of a rental unit, increase rent, decrease services, increase the obligation of a tenant or cause undue or unavoidable inconveniences, harass or violate the privacy of the household; refusal to renew a lease or rental agreement; or other forms of threat or coercion.

SPECIAL PROTECTIONS FOR TARGETED GROUPS

Some jurisdictions have established special protections for targeted groups; most often these are for the elderly and handicapped, but sometimes they also apply to households with low or moderate incomes or to families with minor children. Nationally, 20 percent of those communities with conversion ordinances provide special protections for elderly renters, while 15 percent provide special protections for low-income renters. Communities with heavy conversion activity are more likely than others to have passed ordinances giving protection to elderly tenants. These protections may apply to all members of the protected class, or only to those who also meet income guidelines. The most important of these provisions is the extension of the notice period, usually amounting to a lease extension.

Five states provide special protections to tenants who are elderly, handicapped, or have minor children. Minnesota permits all three groups to extend the right-to-occupancy period from 120 to 180 days upon written notice. Pennsylvania extends the one year notice for all tenants to two years for elderly and handicapped tenants who have occupied their units for at least two years. The terms of tenancy during the first year may not be altered. During the second year of occupancy which is provided for the elderly and handicapped, the rent may be increased only to reflect increases in real estate taxes and utility charges for the period between notice and the time the lease would otherwise expire.

Michigan recently enacted legislation that requires converters to offer elderly and handicapped tenants the opportunity to extend their leases from four to ten years, depending on the age of the tenant. The law stipulates that rents cannot be increased beyond the "fair market" rents for comparable units for those eligible under the law.26/ Since the extended lease provisions may impose

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26/ Lease extension eligibility is restricted to elderly and handicapped tenants who pay less than $450/month for a 1-bedroom unit, or less than $550/month for 2-bedroom units, and who were occupying their units the day the legislation was enacted, (Oct. 10, 1980). Tenants between the ages of 65-69 years or any handicapped tenants are eligible to extend their lease for 4 years after the building is converted. All tenants between the ages of 70-74 years are entitled to 6-year extensions; tenants 75-80 years old are guaranteed 7-year lease extensions; and those over the age of 80 are provided with 10-year extensions.

costs on developers, the Michigan law authorizes a state fund to provide developers or investors (those who purchase mortgages on converted units willing to rent to elderly and handicapped tenants) with low-interest loans to offset the additional carrying costs incurred as a result of the statute. 27/

New York has extensive provisions designed to safeguard the economic well-being of elderly and handicapped tenants. State legislation mandates that tenants who are 62 years or older when a conversion plan is declared effective do not have to purchase their apartments. These measures apply to conversions in New York City (the most populous portion of the state) and to municipalities in the surrounding counties (Nassau, Rockland, and Westchester) if such municipalities have implemented the state law by local optional legislation. The three-county and New York City laws afford the nonpurchasing elderly tenant (and his or her spouse) a form of life tenancy, with rents to continue under any applicable regulatory system, or if unregulated, to be adjusted according to comparable rental rates in the area. 28/ In 1980, New York adopted similar legislation to protect "eligible handicapped persons." Pursuant to §352-eeee of the General Business

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27/ If the state does not have low-interest funds available to aid unit-owners in covering the carrying cost, lease extensions for tenants 65-69 years old will be reduced to 2 years. Nevertheless, developers are obligated to grant extended leases to all renters over the age of 70, regardless of the availability of state funds.

28/ The New York City law contains the following statutory prerequisites: the elderly tenant must have resided in the premises for at least two years prior to the time of the conversion; the apartment must be the tenant's primary residence; the annual income of the household must be less than $50,000; and the tenants must state their intention to take advantage of the benefits of this provision by completing forms from the Attorney General's office within 60 days after the Offering Plan has been "accepted for filing." This decision, however, can later be rescinded by the tenant. The New York City legislation also differs from its three-county counterpart in that it subtracts elderly tenants who choose to take advantage of this statute from the total number of tenants in the premises when determining whether or not 35 percent of the rent stabilized tenants have purchased (required for an eviction plan). If the elderly tenants who are taking advantage of this statute occupy rent-controlled apartments, only one-half of their number is subtracted from the base count in determining whether the 35 percent sale to tenants (required for an eviction plan) has been met.

Law, eviction proceedings cannot be commenced against eligible handicapped persons. "Eligible handicapped persons are persons who (1) are non-purchasing tenants, (2) have an impairment which results from anatomical, physiological or psychological abnormalities, other than addiction to alcohol, gambling, or any controlled substance, which are demonstrable by medically accepted clinical and laboratory diagnostic techniques, and which are expected to be permanent and which prevent the tenant from engaging in any employment or other gainful activity on the date the Attorney General has accepted the Plan for filing, and spouses of any such tenants on such date, (3) have resided in the building as their primary residence for at least two years prior to such date, and (4) have elected, within 60 days of the date the Attorney General has accepted the plan for filing, on forms promulgated by the Attorney General and presented to them by the Sponsor, to become non-purchasing tenants." Such election does not preclude eligible handicapped from subsequently purchasing pursuant to the provisions of the Plan.

Connecticut protects elderly (over 62), blind, and disabled tenants whose incomes are within certain limits from eviction without cause until January 1, 1983 provided the landlord does not remove the unit from the rental market or decide to live in it himself. This protection applies only to tenants in buildings containing seven or more units. Municipalities can set income limits between $13,000 and $21,000 for single persons, and $17,000 and $25,000 for couples in regard to this protection. The lower limits prevail if a municipality does not act. The January 1, 1983 limitation is required by the state's "sunset" law and the legislature will review this provision in 1982. In addition, the bar to eviction covers all designated rental units whether or not a conversion is planned.

Montgomery County, Maryland provides an additional 180 days notice for the elderly. Chicago, Indianapolis, Minneapolis, Oceanside, California, and Lakewood and Lyndhurst, Ohio provide an additional 60 days. Beachwood, Ohio has a 90-day minimum, with at least four additional months based on length of residence and a minimum of six months for the elderly.

Skokie, Illinois grants elderly and handicapped tenants, as well as families with children, a minimum lease extension of six months, measured from the date that the condominium declaration is filed. Los Angeles City and County both provide one year of continued occupancy during relocation efforts; the City further states that there is no limit on continued occupancy during relocation efforts for the elderly, disabled, households with minor children, or residents of low- to moderate-income housing. Boston extends the one year notice for rent controlled and "vacancy decontrolled units" 29/ to two years for elderly and handicapped tenants meeting income guidelines. Exhibit 3 summarizes some additional protections for the elderly and handicapped in selected localities.

The most comprehensive tenant protection for the elderly or handicapped is the lifetime lease. Three cities in California -- San Francisco, Oakland, and Walnut Creek -- offer lifetime leases for the elderly. In Washington, D.C., developers are prohibited from evicting or sending notice to elderly tenants (62 years and older) if their annual income is less than $30,000, unless they are found to have violated the terms of their lease, or they fail to pay rent.

A few other provisions are designed to lessen the pressure to make decisions regarding tenure. San Francisco allows the elderly to cancel lifetime leases upon 30 days notice. Chicago, Lakewood, and Lyndhurst, Ohio, extend the length of the right of first refusal period for the elderly: Chicago from 120 to 180 days; the others from 90 to 120 days.

Certain relocation assistance programs are designed to aid other targeted groups, particularly low- and moderate-income households, regardless of age or status. The City of Los Angeles provides for a substantially greater payment ($2,500 per household) to special classes of protected tenants, including persons over 62, those who are handicapped or disabled, or households with minor children. In San Francisco, the relocation payments specified are only available to tenants during the 120-day notice period or the term of their lease. However, the elderly may receive this payment whenever they elect to move. Oceanside increases the payment from one to two months rent for low-income tenants.

29/ Units previously regulated by the Boston rent control law, which are legally vacated on or after January 1, 1976, are exempted from further rent control, and thus referred to as "vacancy decontrolled units."

Exhibit 3

Additional Protections for Elderly and Handicapped Tenants

	Additional Notice of Conversion	Lease Extensions	Life Tenancies	Additional Decision Period to Extend Lease	Extended Right to First Refusal	Relocation Assistance
Beachwood, OH	X					
Boston, MA	X					
Cheltenham, PA		X				
Chicago, IL	X			X	X	
Duarte, CA		X				
Indianapolis, IN	X					
Lakewood, OH	X			X	X	
Los Angeles, CA		X				X
Lower Marion, PA		X				
Lyndhurst, OH	X			X	X	
Minneapolis, MN	X					
Montgomery Co., MD	X					X
New York, NY			X			
Newport Beach, CA		X				
Oakland, CA		X	X			
Oceanside, CA	X					
San Diego, CA						X
San Francisco, CA			X			X
Skokie, IL		X				
Walnut Creek, CA			X			
Wayzata, MN	X					

PRESERVATION OF THE RENTAL STOCK

In response to a perceived threat to the supply of rental housing, a few communities have enacted legislation designed to limit the number of conversions. The five types of regulatory measures that seek to preserve a community's rental stock are presented below.

1) Temporary Conversion Moratoria. In response to significant or impending conversion activity, a number of communities have imposed temporary moratoria on further activity. A moratorium is generally designed to preserve the status quo while the full ramifications of conversion activity on tenants, buyers, the rental stock, and low- and moderate-income housing are assessed and an appropriate local policy is developed.

Nationally, moratorium regulations have been passed by more than one-third of all local governments which have conversion ordinances (six percent of all local jurisdictions). These moratoria generally range from 30 days to one year, with more than one-half running for one year. In a few cases, the moratorium has been for more than one year. Nationally, moratoria are reported more frequently in the western and north central areas of the country, and least often in the northeast and south. See exhibit 4.

In Washington, D.C., for example, a series of moratoria on cooperative and condominium conversions has occurred since 1976. The enactment of moratoria was complicated by the City Council's recurring use of its 90-day "emergency" legislation authority which unlike permanent legislation, does not require Congressional approval. Since the 1976 D.C. Condominium Act regulated only condominium conversions (leaving cooperatives unregulated) the D.C. City Council adopted its first moratorium on cooperative conversions in November 1976, in order to study the issue before passing permanent legislation. After ten extensions of the 1976 moratorium over a three-year period, and the imposition of an additional 90-day emergency-based moratorium which was extended twice and challenged in court 30/, the City Council finally passed permanent legislation in 1980 to regulate the conversion of both cooperatives and condominiums.

30/ Washington Home Owner Council, Inc., v. District of Columbia, 415 A.2d 1349 (1980). The D.C. Court of Appeals held that the adoption of successive, interim moratoria on condominium and cooperative conversions was unauthorized by the District of Columbia Self-Government and Government Reorganization Act.

Exhibit 4

Local Condominium and Cooperative Conversion Regulations in the Nation's Largest Metropolitan Areas

Standard Metropolitan Statistical Area	Conversion Moratorium (1970-1980)		Conversion Ordinance or Policy	Standard Metropolitan Statistical Area	Conversion Moratorium (1970-1980)		Conversion Ordinance or Policy
	Date	Length			Date	Length	
Anaheim-Santa Ana-Garden Grove, CA				**New Orleans, LA**			
Anaheim City			‡	New Orleans City			
Santa Ana City			A B	**New York, NY-NJ**			
Garden Grove City			A B	New York City			§
Costa Mesa City			B C	Fort Lee City	11/79-12/79*	2 mo.	
Newport Beach City			A B C D	*§			§
Orange County*			A B C D	**Newark, NJ**			
Atlanta, GA				Newark City			
Atlanta City			A B	Verona City	8/79-12/79*	4 mo.	
Baltimore, MD				**Philadelphia, PA**			
Baltimore City			A C'	Philadelphia City	9/79-3/81'	18 mo.	A B
Boston, MA				Cheltenham Twp.			A
Boston City			A	Lower Merion Twp.			A B
Brookline City			A	**Phoenix, AZ**			
Cambridge City			C	Phoenix City			
Buffalo, NY				Mesa City			B
Buffalo City				**Pittsburgh, PA**			
Chicago, IL				Pittsburgh City			
Chicago City	3/78-4/78'		A B	**Portland, OR-WA**			
Arlington Hts.	6/78-8/78	2 mo.	A B	Portland City			
Evanston City	7/78-3/79	9 mo.	A B	**St. Louis, MO-IL**			
Skokie City*	11/77-7/78	8 mo.	A B	St. Louis City			
Cincinnati OH-KY-IN				University City			A B
Cincinnati City				Webster Grove City	8/79-2/80	6 mo.	A B
Cleveland, OH				**San Antonio, TX**			
Cleveland City				San Antonio City			
Beachwood City	8/79-11/79	3 mo.	A B C	**San Bernardino-Riverside-**			
Lakewood City	2/79-5/79	3 mo.	A B C	**Ontario, CA**			
Lyndhurst City*			A B C	San Bernardino City			C
Columbus, OH				Riverside City	2/79		‡
Columbus City				Ontario City			
Dallas-Ft. Worth, TX				Montclair City			A B C
Dallas City				Placentia City	10/79-11/80	11 mo.	‡
Ft. Worth City				Upland City*	11/79		‡
Denver-Boulder, CO				**San Diego, CA**			
Denver City			A	San Diego City			A C
Boulder City			A	Chula Vista City			A B
Detroit, MI				La Mesa City			B C
Detroit City				Oceanside City*	3/79-11/79	8 mo.	A B C D
Hartford, CT				**San Francisco-Oakland, CA**			
Hartford City				San Francisco City	4/74-5/75	13 mo.	A B C D
Glastonbury	12/79-11/80	1 mo.	A C	5/79-8/79 " "	3 mo.		" " " "
Houston, TX				Oakland City	10/78-12/78	2 mo.	A B C
Houston City				Concord City			A B C
Indianapolis, IN				Marin County			A B C
Indianapolis City			A B	Walnut Creek*			A B C D
Kansas City, MO-KS				**San Jose, CA**			
Kansas City				San Jose City	11/73-8/75		A B
Los Angeles-Long Beach				Cupertino City			A B C
Long Beach City			A B	Mountain View	3/74-9/75	18 mo.	A B C
Los Angeles City			A B C D	" "	3/76-3/77	12 mo.	" " "
Duarte City	10/79-4/80	6 mo.	A B C	" "	4/77-4/78	12 mo.	" " "
Gardena City			B C	Palo Alto City*	12/73-11/74	11 mo.	A B C
Los Angeles County*			A C D	**Seattle-Everett, WA**			
Miami, FL				Seattle City	7/78-11/78		A B
Miami City				Everett City			A B
Miami Beach	2/80-3/80'	1 mo.	A	Lynnwood City	6/78-10/78		A B C
Milwaukee, WI				King County			A B
Milwaukee City				Mercer Island*			A B
Minneapolis-St. Paul, MN-WI				**Tampa-St. Petersburg, FL**			
Minneapolis City			A B	Tampa City			
St. Paul City				St. Petersburg City			
Little Canada	12/79		‡	**Washington, DC-MD-VA**			
Wayzata			A B	Washington City	2/78-2/80*	6 mo.	A B C D
Nassau-Suffolk, NY				" "	2/80-8/80	6 mo.	" " " "
No Central City				Montgomery County	7/79-11/79	4 mo.	A B C D
*§							

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Codes to Exhibit 4

I Ordinance Pending

* Additional outside Central City jurisdictions in the SMSA having ordinances.

A. Tenant Protection
B. Buyer Protection
C. Rental Stock Protection
D. Preservation of Low- and Moderate-Income Housing

§ New York City has special state statutory authority covering elderly persons in conversions.

§ Local jurisdictions in Nassau, Rockland, and Westchester Counties may also be covered by state law protections for the elderly by passing a local option ordinance. The following communities have opted to be covered by State law.

Nassau County (Nassau/Suffolk)

Great Neck
Long Beach
Thomaston
Russell Gardens
Great Neck Plaza
North Hempstead
Rockville Center

Rockland County (New York SMSA)

Clarkstown
Haverstraw
Nyack
Spring Valley

Westchester County (New York SMSA)

Eastchester
Harrison
Larchmont
Mt. Vernon
Greenborough
Hastings-on-Hudson
Irvington
Mamaroneck
New Rochelle
Pleasantville
Port Chester
Tarrytown
White Plains

FOOTNOTES

1. A Baltimore ordinance was struck down by a lower court; this decision was sustained on appeal.
2. A Chicago moratorium ordinance was struck down in Federal Court.
3. A Miami moratorium and conversion ordinance was struck down by a lower court and the case is on appeal.
4. A Fort Lee, N.J. moratorium was struck down by a lower court.
5. A Verona, N.J. moratorium was struck down by a local court.
6. A Washington, D.C. moratorium was struck down by a lower court. The lower court's ruling was sustained on appeal.
7. A Philadelphia, Pa. moratorium was nullified when the state preempted the authority to regulate the development of condominiums.

Some moratoria enacted by municipal governments have been struck down in state courts, principally on state preemption grounds, and one moratorium has been enjoined by a Federal court on constitutional grounds because it was judged to be vague and arbitrary. 31/

In Philadelphia, an 18-month conversion moratorium was nullified when the State of Pennsylvania pre-empted local authority to regulate the development of condominiums by passing an amended version of the UCA in July, 1980.

Moratoria as defined here, consist of short-term and emergency legislation to stop conversions pending the development of permanent conversion regulation under zoning, subdivision planning or other areas of municipal law. However, many of the permanent ordinances passed by municipalities, either incidentally or by design, also result in a partial or complete ban on future conversion activity. The use of vacancy rate conditions (see below), or broad approval criteria relating to the social impact of conversions 32/, have in some places, resulted in a virtual stoppage of conversion activity.

31/ See *Hampshire House Sponsor Corp. v. Borough of Fort Lee*, 412, A.2d 816 (N.J. Super. Ct. 1979)--Conversion moratorium ordinance of eight months duration held invalid. *Claridge House One, Inc. v. Borough of Verona*, ____ A.2d ____ D.N.J. 1979)-- One-year conversion moratorium ordinance held invalid. *Chicago Real Estate Board v. City of Chicago*, ____ F.Supp. ____ (N.D. Ill. 1979)--Injunction issued against implementation of Chicago ordinance declaring a conversion moratorium was held to be vague, arbitrary and otherwise unconstitutional.

32/ Permanent legislation in Somerville, Massachusetts requires developers to obtain permits to convert rental units to condominiums. A condominium review board considers tenant hardships, owner hardships, and the City's housing situation before granting or denying conversion permits.

2) Vacancy rate minimum. A few municipalities, mostly in California, have adopted ordinances that prohibit conversions of rental units if the jurisdiction's vacancy rate for rental units falls below a minimum level--a level considered to reflect stability in the rental market. The minimum vacancy rate threshold commonly used ranges from three to six percent. 33/ Nationally, less than one-fifth of the communities with conversion ordinances use minimum rental vacancy rates to regulate conversions.

The imposition of a vacancy rate condition often has resulted in the immediate (and perhaps permanent) bar on conversion activity because of the tight rental markets in many communities. For example, the first ordinance of this kind was developed by the city of Palo Alto in 1974 and, since then, no conversions have occurred there. However, Palo Alto's original ordinance, and a number of the other vacancy rate ordinances provide for exceptions to the conversion prohibition if a majority of a building's tenants consents to conversion. In the District of Columbia, conversion bars are also exempted if the rental units are designated to be luxury or high-rent.

33/ District of Columbia (3 percent or lower, unless a majority of tenants consent to conversion, or the units are designated as luxury or high-rent); Gardena (3 percent or lower, unless two-thirds of the tenants approve the conversion); Cupertino (below 5 percent); Marin County (below 5 percent, Planning Commission may deny approval); Newport Beach (5 percent or lower, unless two-thirds of tenants approve conversion, or project's effect is minimal); Orange County and San Diego (5 percent or lower); and San Bernardino (below 6 percent).

3) Quota approaches. A few municipalities have utilized a quota approach to ensure that conversions do not disrupt the rental market at any given time or seriously deplete the amount of rental stock. Conversion quota ordinances involve two kinds of formulae: an annual percentage of the rental stock limitation; and an annual numerical limitation. Walnut Creek's ordinance is an example of a percentage quota that limits conversions to five percent of the City's potentially convertible rental stock in any one year. According to the Pinole, California ordinance, if the number of rental units is less then 15 percent of the City's total residences, apartments cannot be converted to condominiums. Some other cities with vacancy rate conditions on conversion have adopted a quota approach when the vacancy rate threshhold is exceeded. Palo Alto and Montclair, for example, consider the number of vacant units in excess of three percent to be a "vacancy surplus" and permit conversion applications when a vacancy surplus is declared, provided the number of converted units does not exceed the number in surplus. San Francisco's ordinance is an example of a numerical quota, where the number of authorized conversions is limited to 1,000 per year.

4) Discretionary Authority. Finally, a number of cities, again, predominantly in California, have given a local agency the discretionary authority (in lieu of, or in addition to, other conditional criteria) to approve or reject specific conversion projects. The criteria used for approving a specific project application may include the conversion's effect on tenant displacement 34/ and the

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34/ The Marin County ordinance states that if conversion reduces the number of rental units to less than 25 percent of the total dwelling units, approval may be denied. Concord, Durarte, and San Francisco consider evidence of "warehousing" (vacancies being held) within a particular project prior to conversion. In Glastonbury, a conversion permit for any unit will not be issued until (1) a tenant has purchased a unit; or (2) the tenant has relocated or waived the right to relocate; or (3) 12 months have expired since the permit was applied for (24 months in the case of tenants 60 years or older); or (4) the party seeking conversion approval has increased the rental stock by 50 units in the previous 3 months. The District of Columbia cooperative ordinance prohibits conversion of a rental building to a cooperative unless (1) fewer than 50 percent of the units in the building are occupied; (2) half or more of the units are occupied and the majority of the heads of these households consent in writing to conversion; or (3) the building is a high-rent housing accommodation.

rental market; the need for low- and moderate-income housing 35/, and the conversion's effect on the general health and welfare of the community. For example, in El Cerrito, California, the City Council was considering a proposed conversion ordinance which gave the Planning Commission the authority to deny a landlord's request to convert a building if: the vacancy rate for apartments city-wide falls below five percent; the conversion will displace 25 percent of the tenants who have occupied their units for five years and who have low or moderate incomes, or who are senior citizens, disabled, or who have school-aged children; or, if the Planning Commission or City Council determines that the building owner has intentionally driven up the vacancy rate in preparation for a conversion.

5) New Construction Replacement. Another approach taken in tying conversion approval to the local rental supply involves new construction. A few communities have developed formulae which permit a certain number of conversions upon the addition of new rental stock. La Mesa's ordinance, for example, states that the maximum number of units which may be converted within a given year shall be equal to 50 percent of the yearly average number of apartment units constructed in the previous two fiscal years. One criterion for reviewing a conversion which Marin County considers is whether the conversion will reduce the existing rental/homeowner dwelling unit ratio without replacement housing being provided. The Mountain View ordinance conditions approval upon the production of new rental units, and limits annual conversion approvals to 5 percent of the total units. 36/

35/ In Walnut Creek, once the quota of converted units has been reached, approval will only be granted if the developer provides for low- to moderate-income households and senior citizens, or provides for the construction of new rental housing, or donates land or funds for new rental housing or senior citizen housing.

36/ A conversion will only be approved in Mountain View if an equal number of new rental units has been added to the rental stock, or a majority of tenants agrees to purchase their units. However, the reduction of rental units occasioned by the tenant-approved conversion constitutes a "deficit" in the base number of rental units. A nontenant approved conversion could only occur when this deficit plus a number of units equal to the conversion has been made up by rental construction.

The City of Oakland's conversion ordinance states that for conversions of five or more units, the developer must add one new rental unit to the housing stock for each unit converted. A developer can gain approval by showing proof that he has "conversion rights" through projects he has generated, whereby one conversion right is equivalent to one housing unit within such a project. Conversion rights may also be generated through rental construction by: increasing the number of units in an existing residential rental building; converting a non-residential building to residential rental units; or through major rehabilitation of residential buildings that had been vacant for one year prior to the commencement of the rehabilitation.

The Oakland ordinance also creates conversion rights through the construction of a new condominium or cooperative if the developer agrees to offer the units to the public as conventional rentals for at least seven years. However, a developer may have to provide replacement housing in the same neighborhood as the conversion project if the city finds that it will create a rental shortage or have other negative impacts in a specific area of the city.

PRESERVATION OF LOW- AND MODERATE-INCOME HOUSING

The effect of apartment conversions on the available stock of low- and moderate-income rental housing is an area of particular concern for some localities. Many of the municipal ordinances which set criteria for conversion approval include the potential effect on low- and moderate-income housing as a factor in the decision to approve or disapprove a conversion application. The thrust of these ordinances serves a dual purpose: they address the needs of those tenants in converting buildings who cannot or choose not to buy their converting units; and, they serve to mitigate the effects of their displacement through the assurance of available and affordable units elsewhere in the area. The key focus of these ordinances is the future availability of low- and moderate-income housing opportunities for all members of the community. This section reviews ordinances which have specific provisions designed to protect the availability of low- and moderate-income housing, either by mandating rental and homeownership set-asides in a conversion project, or by requiring the developer to contribute funds for the construction of new low- and moderate-income housing.

Only a few communities, again primarily in California, have adopted provisions which seek to preserve or enhance the supply of low- and moderate-income housing. The California Coastal Commission requires that, within its jurisdiction, one-third of all converted units be reserved for low- and moderate-income households. Conversion ordinances which seek to preserve low- and moderate-income housing can be divided into the following two major categories: (1) set-aside provisions; and (2) replacement of low- and moderate-income housing.

1) Set-aside Provisions. Set-aside provisions usually require that a certain percentage of all converted units be made available for persons of low or moderate income. The Marin County ordinance states that its Planning Commission may require a reasonable percentage of converted units to be reserved for persons of moderate income. An Orange County ordinance encourages developers to convert "affordable" units in lower-income areas where there is a shortage of affordable rental units. If the selling price of at least 25 percent of the converted units is "set-aside" for persons of low and moderate incomes, the developers' conversion permit application is given favorable consideration.

San Francisco, which has the oldest and most detailed set-aside arrangement, requires that in converting a building of five or more units, the converter must provide a ten percent set-aside of units for rental or purchase by low- and moderate-income households (or retain the number of existing low- or moderate-income units, whichever is greater) 37/. If the units are to be retained as rentals, the rental rate must remain at the same level as at the time of the application for conversion, or at the maximum rent within low-or moderate-income levels, whichever is lower. 38/ Such rental units must remain in the low- and moderate-income housing stock for 20 years, unless sold during that time under the following procedure. If the units are to be sold, they must be offered at prices which do not exceed two and one-half times the median income of low- or moderate-income families in the area. In order to ensure that the units are maintained for low- and moderate-income households, the

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37/ A converter in San Francisco has two alternatives (discussed in the next section on replacement housing) to the above percentage set-aside in a conversion project to satisfy the city's desire to preserve low- and moderate-income housing.

38/ Annual rent increases are generally limited to the residential rent component of the Bay Area Cost of Living Index.

City has a right of first refusal to buy the unit at a sum equal to the original purchase price plus adjustments. 39/ The city must then sell the unit to other qualified low- and moderate-income households.

2) Replacement of low- and moderate-income housing. In addition to (and sometimes in lieu of) set-aside approaches, a few communities have sought to protect their rental stock by requiring converters to allocate a portion of newly constructed units for low- and moderate-income household use, pay a tax, or contribute to a public fund to be used for furthering low- and moderate-income housing opportunities. As an alternative to set-aside requirements, San Francisco allows a converter to construct an equal number of units which will be available for low- and moderate-income rental or homeownership, or pay into a City Housing Development Fund a sum of money equal to 10 percent of the difference between the total of proposed sales prices for units in the building and the sales prices of the units for moderate-income buyers. Housing Development Funds can be used to reduce the costs of construction of new low- and moderate-income housing or to expand homeownership opportunities through down payment assistance, co-ownership and/or "equity partnership" programs.

The City of Los Angeles requires that $500 per converted unit be paid to the City for the development of low- and moderate-income rental housing. In Los Angeles County, one percent of the purchase price of each unit must be deposited with the County Housing Authority for developing low-income housing. Oceanside requires two percent of the purchase price of each converted unit to be paid into a fund for the development of low income housing.

39/ Adjustments include the costs of any improvements by the owner, plus a "market appreciation" based on the housing component of the Bay Area Cost of Living Index.

BUYER PROTECTIONS

Almost half of the states have revised their condominium statutes to include more protections for all condominium purchasers. 40/ These protections apply to both newly constructed condominiums and conversions, although several states and the Uniform Condominium Act require additional protections in the case of conversions. The most common buyer protection provisions concern the preparation and publication of a building, property, or engineer's report. This report is often a key element in a full disclosure scheme of consumer protection and typically includes information on the present condition of the property, the useful life of the major structural and mechanical components, the estimated costs of major repairs and replacement, and the project budget and past operating expenses of the building. A few states specify that the developer must provide warranties, post bonds, or establish escrow funds to guarantee the quality or completion of common areas and individual units. Some states give purchasers the right to rescind or cancel the sales contract within a set period of time, usually 10 to 15 days after execution of the contract, or on receipt of all disclosure documents.

Municipalities with ordinances that protect consumers are most often found in states which also have enacted "second-generation" condominium statutes. Thus, in many cases, municipal ordinances overlap with state buyer protection measures in some respects, while in other respects, local ordinances refine or substantially expand upon state condominium buyer protections. The range of buyer protection regulations is discussed in detail below. Exhibits 5 and 6 display the range of buyer protections for conversions at the state level, and the states' disclosure requirements, respectively.

(1) Building inspection, code compliance and disclosure. At the state level, very little building code regulation exists. Where it does, most statutes mandate compliance with local building codes, or disclosure of any discrepancies in the public offering statement

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40/ The statutes of Florida, California and New York also address cooperatives.

Exhibit 5

State Statutes Affording Protection to Buyers in Condominium and Cooperative Conversions †

	Reports and Disclosures						Warranties	Escrow		Right to Cancel		Other		
	Building Codes	Property Condition	Useful Life	Estimated Repairs	Budget	Legal Documents	Unit/ Common Areas	Work Completion	Deposits	Unconditional	Limited	Notice of Tenant Rights	Schedule of Completion	Other
Alabama														
Alaska														
Arkansas														
Arizona														
California		X				X								X[3]
Colorado						X								
Connecticut	X	X	X	X	X	X	X	X		X		X		X[4]
Delaware														
Florida		X	X		X	X	X	X		X				X[5]
Georgia	X	X			X	X			X		X[1]			
Hawaii	X	X			X	X		X	X		X[1]			X[4]
Idaho														
Illinois		X	X	X	X	X			X	X		X		
Indiana														
Iowa														
Kansas														
Kentucky														
Louisiana	X	X	X		X	X					X[1]			
Maine					X	X				X				
Maryland		X			X	X		X		X				
Massachusetts														
Michigan		X			X	X		X	X	X				X[6]
Minnesota*	X	X	X[7]	X[8]	X	X	X		X	X			X	
Mississippi														
Missouri														
Montana								X			X[1]			
Nebraska														
Nevada														
New Hampshire		X	X	X	X	X			X	X			X	
New Jersey	X	X			X	X			X	X		X	X	X[3]
New Mexico														
New York	X	X			X	X				X		X		
North Carolina														
North Dakota														
Ohio	X	X	X	X	X	X	X		X	X				
Oklahoma														
Oregon		X	X	X	X	X	X			X			X	
Pennsylvania*	X	X	X[7]	X[8]	X	X	X		X	X			X	X[8]
Rhode Island														
South Carolina														
South Dakota					X				X					
Tennessee														
Texas														
Utah														
Vermont														
Virginia	X	X	X	X	X	X	X	X	X	X				
Washington														
West Virginia*	X	X	X[7]	X[8]	X	X	X		X		X[2]		X	
Wisconsin						X				X				
Wyoming														
Uniform Condominium Act	X	X	X[7]	X[8]	X	X	X		X		X[2]		X	

†Most state protections apply only to condominiums.

*Uniform Condominium Act with amendments.

[1] Buyers may cancel if misled by fraud or misrepresentation.

[2] Buyer may cancel if Public Offering Statement not disclosed.

[3] Property report includes utilities, access, noise, and safety, etc.

[4] Design standards.

[5] Must disclose prior use of building.

[6] Title insurance.

[7] Useful life or indication that no representations are made on major systems.

[8] List of uncured building violations and cost to repair.

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Exhibit 6

Disclosure Requirements: Property Report, Budget, and Legal Documents

State with Agency Oversight and Disclosure to Prospective Buyers	States Which Mandate Disclosure to Prospective Buyers
California — Real Estate Commission[1]	Colorado[2]
Connecticut — Dept. of Housing	Georgia
Florida — Division of Florida Land Sales and Condominiums	Illinois[3]
Hawaii — Real Estate Commission	Maryland
Michigan — Corporation and Securities Bureau (Dept. Commerce)	Minnesota
New Jersey — Department of Community Affairs	New Hampshire
New York — Attorney General	Ohio
Oregon — Real Estate Commission	Pennsylvania
Virginia — Real Estate Commission	West Virginia
	Wisconsin[2]

[1] Property report and legal documents only.

[2] Legal documents only.

[3] Legal documents and budget only.

or registration. 41/ Most local ordinances mandate that all units to be converted must be inspected by the appropriate local agency. Ordinarily, this is a department concerned with building inspections and fire code violations. 42/ Many of the ordinances that mandate inspection and code compliance also require a list of uncorrected violations and the estimated cost of their cure, or a statement of compliance with the current code. 43/

A few ordinances provide for exceptions to code compliance, usually if an escrow fund or bond has been created to cover the uncured violations 44/, or if the items in question were in compliance at the time of construction. 45/

41/ Connecticut, Florida, Hawaii, New Hampshire, Louisiana, Michigan, Minnesota, New Jersey, New York, Ohio, Oregon, Pennsylvania, Virginia and West Virginia all require such disclosure. New York regulations also require that building, fire, or other code violations be removed before the conversion process is completed.

42/ Municipalities with a code inspection requirement include Chula Vista, Concord, Costa Mesa, Cupertino, Gardena, La Mesa, Long Beach, Los Angeles, Marin County, Mountain View, Oceanside, Palo Alto, San Francisco, San Jose, Santa Ana, Walnut Creek, Skokie, University City, Webster Grove, Beachwood, Lakewood, Lyndhurst, Everett, King County, Mercer Island, and Seattle. Evanston and St. Louis require a Condominium Code Assessment Report. In addition, the installation of either fire or smoke detectors (or both) is specifically required in Concord, La Mesa, Riverside, Walnut Creek, and University City.

43/ Municipalities with statutes which contain this triad of provisions include Concord, Marin County, San Jose, Washington, D.C., Atlanta, Arlington Heights, Indianapolis, Everett, King County and Seattle. In Beachwood, Ohio, any variances which were originally granted in connection with the property must be reapproved.

44/ In San Francisco and Walnut Creek, compliance with the building code is not required prior to approval of a conversion proposal if an escrow fund has been established to assure that violations will be corrected and repair work in progress will be completed. In Lakewood and Lyndhurst, Ohio, while the individual units must be in compliance, the common area need not be, if this fact is disclosed in the public offering statement and a bond equal to the amount of estimated repairs to the common area is posted.

45/ The Skokie, Illinois ordinance states that compliance with current codes may be waived with respect to the number of parking spaces, the number and location of units, or other provisions of the code, if these items were in compliance with the code in force when the unit was built.

(2) Preparation and publication of building, property or engineer's report. Since the conversion of rental dwellings involves existing rather than new structures, the physical condition of the premises is of vital concern to all prospective buyers. Thus, ordinances which require the converter to prepare, distribute and authorize information about the condition of the building and property provide the backbone for buyer protection legislation. Building and property reports usually cover major structural and mechanical components, including the foundation, roof, electrical and plumbing systems, as verified by an engineer or architect. 46/ Some states also require a statement in the property report which discloses the estimated remaining useful life of the major structural and mechanical components, and/or the converter's estimate of the replacement cost for these components. 47/

Florida, for example, requires a property report detailing the date and type of construction, the prior use of the building, and the condition of the roof and structural and mechanical elements, as corroborated by an architect or engineer's report. It also requires a substantiated report on the extent and treatment of termite infestation.

States and localities which require the converter to prepare building or property reports must make them available to both the tenants and prospective buyers, as well as to the relevant state and local agencies with jurisdiction over conversions prior to the offering of units for sale.

46/ Florida, Hawaii, Louisana, New Jersey, Pennsylvania, and New York require independent verification by an architect or engineer.

47/ Connecticut, Hawaii, Louisana, Oregon, and Virginia require estimates of useful life; Connecticut and Virginia include estimated costs of repairs. New York prohibits the inclusion of such cost estimates on the theory that inflation, differences among contractors, differences in the scope of the work and available warranties, make such cost projections unreliable and counter-productive.

(3) Full Disclosure. A full disclosure package is commonly referred to as a Public Offering Statement or Prospectus. 48/ In addition to including building reports, several states require the inclusion of a projected annual budget of the first year of operation as a cooperative or condominium. Generally, these estimates are based on the actual operation or upkeep of the building. 49/ New Jersey, for example, requires an audited statement of expenses for the past five years, or the ownership period, whichever is less, as certified by an independent public accountant.

Aside from property reports and budget information, a third component of disclosure packages are the legal or organizational documents which are submitted to the governing state and local agencies. Included are the condominium declaration, bylaws, and articles of incorporation of the association. Additionally, the law may stipulate that information on management contracts, recreational leases and any encumbrances, easements, liens, or other matters affecting title be disclosed. 50/

Some states mandate that prospective purchasers be informed of the rights of tenants in a residential building undergoing conversion. Connecticut requires that purchasers be given a copy of the notice

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48/ The disclosure package is alternately described in different conversion ordinances by the term "Information Sheet" (Mountain View); "Public Offering Statement" (District of Columbia), (Lakewood and Lyndhurst); "Property Report" (Skokie); or "Condominium Disclosure Statement" (Webster Grove); "Offering Plan" (New York).

49/ Connecticut, Florida, Georgia, Hawaii, Illinois, Louisiana, Maryland, Minnesota, New Jersey, New York, Ohio, Oregon, and Wisconsin all require a budget statement. Maine does also, but its disclosure requirements, in general, are only applicable to time-share projects.

50/ California, Connecticut, Florida, Georgia, Hawaii, Illinois, Louisana, Maine (time-shares only), Maryland, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Dakota, Virginia, West Virginia, Wisconsin and the UCA require disclosure of most or all of the above to prospective purchasers. Colorado requires disclosure only of the bylaws.

to tenants. New Jersey and New York both mandate that the Prospectus or Public Offering include a statement of the rights of nontenant purchasers of apartments that are occupied by tenants who are entitled to remain for brief or indefinite periods. Illinois stipulates that the contract disclose the tenants right of first refusal.

(4) Warranties. Only a few states require warranties by the condominium declarant or developer. This coverage usually extends to both the common areas and the units. However, conversions may not be covered by the same provisions as newly constructed condominiums. Most condominium statutes were drafted solely with new construction in mind (as in for example, provisions relating to condominium developers complying with subdivision laws). Thus, although the issue is an open one, in most jurisdictions a compelling argument can be made that conversions were not intended for inclusion in the warranty section of the applicable condominium statute. This argument would be supported if there were few or no conversions in the state at the time that the statutory provision was enacted.

The most comprehensive and innovative approach for providing guarantees to prospective purchasers concerning the quality of the converted property is found in Florida. 51/ A converter must under-

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51/ The Florida statute requires the creation of reserve accounts for the air conditioning system, plumbing system (if water is supplied to the project in galvanized plumbing), and the roof. A detailed formula specifies the cost and useful life of the relevant building components to be used in determining the converter's contribution to each reserve account. The reserve accounts are funded on a *pro rata* basis upon the sale of each unit. If the converter does not create reserve accounts or post a security bond, the statute deems that the converter has granted each unit purchaser an implied warranty of fitness and merchantability for the purposes or use intended, as to the roof and structural components of the improvements and as to the mechanical, electrical, and plumbing elements serving as improvements (except mechanical elements serving only one unit). The time of the warranty runs from the longest of (but in no event more than 5 years) the following: three years from the notice of intended conversion; one year after the homeowners obtain control of the association; or, three years from the recording of the declaration to condominium. A developer may satisfy these responsibilities by obtaining an adequate warranty insurance policy, or a converter may post a surety bond, payable to the association, to cover the amount specified for reserve accounts.

take one of the following three alternatives: (1) establish reserve accounts for capital expenditures and expenditures for deferred maintenance; (2) provide warranties on certain building components; or (3) post a surety bond equal to reserve account requirements.

Montgomery County, Maryland has a comprehensive warranty requirement applicable to converted units, covering three years for the common elements, and one year for the unit, backed by a reserve fund established by the developer. In some areas, particularly where the UCA has been adopted, the representations and descriptions of the property made by the sponsor-developer create express warranties. In addition, an implied warranty of good condition and suitability for use is attached to the individual units, and may be waived only for specific defects.

(5) Purchaser's right to cancel or rescind contracts of purchase. The right to rescind or cancel is sometimes provided for a certain number of days after execution of the contract, or after receipt of all required disclosure documents, whichever is later. The most common provision for cancellation specifies a period ranging from approximately five to fifteen days (after either full disclosure or any amendment or "material changes") during which the buyer may rescind a purchase agreement. 52/ In New York, for example, purchasers

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52/ In Connecticut and Maine (time-shares only), the right to cancel lasts 15 days; in New Jersey, 7, and in Oregon, 3. Michigan addresses only the reservation or subscription agreement, which the prospective purchaser may cancel within 10 days after receipt of the required disclosure documents. Virginia allows cancellation within 10 days of the contract date or the receipt of all disclosure information, whichever is later. Florida gives the buyer 15 days after execution of the contract and receipt of all disclosure information. Louisana permits the purchasers to rescind up to 15 days after full disclosure, or after any material changes up to closing. Maryland, Minnesota, and West Virginia provide for a 15 day right of rescission after receipt of the required full disclosure information. In addition, Maryland provides a five-day right extending for 5 business days following notice of any material change in those documents, (this right terminates if the buyer proceeds to closing). Illinois and New Hampshire stipulate that if the disclosure information is not provided at contract, the purchase agreement is voidable within five days after the last item if information is received, or until closing, whichever is earlier. Hawaii and Montana declare that contracts are not final until purchasers have had a full opportunity to read the final public report. They may obtain refunds if the final report differs in "any material respect" from the preliminary report. Georgia provides that contracts executed within less than seven days after receipt of all disclosure information are of no force or effect.

have the right to cancel for several days after receipt of the public offering statement (up to the time of conveyance). In addition, purchasers must be afforded a further right to rescind for ten days whenever a material change is made in the offering plan. A few states specify that the right to rescind terminates at the time of unit closing.

A particularly long period is provided for in the Evanston ordinance, which gives a purchaser the right to rescind a contract within 30 days of receipt of the disclosure statement, if the disclosure statement is not given at least 30 days prior to contract. [53]

(6) Miscellaneous Buyer Protections. Legislation passed in several states provides that all deposits or payments received from purchasers on a contract or reservation agreement must be held in escrow until closing. [54] A few states require that a developer escrow all money paid before issuance of the final public report and, if this is not issued within one year of the preliminary report, the purchaser is entitled to a full refund. [55] The District of Columbia and Evanston ordinances require that purchasers' down payments be deposited in an interest-bearing escrow account.

Several local ordinances contain one or two buyer protection provisions in addition to those discussed above. Mountain View, California prohibits discrimination against households with children and also provides that no management contract may run for more than 30 days after the unit owners assume majority control of the condominium. Skokie, Illinois requires that no exclusive management contract may run for more than one year after the control of the project is turned over to the unit owners. Garden Grove, California requires that any appliance over three years old be replaced by the developer. Lakewood and Lyndhurst, Ohio require that all current assessments for public streets and utilities be paid prior to closing of the title to the first converted unit.

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[53] Purchasers may rescind their contracts within 15 days of execution thereof in Montclair, Mountain View, the District of Columbia (or within 15 days of delivery of an Offering Plan, whichever is later); Skokie, Montgomery County (or within five days of receiving the Final Property Report, or at any time prior to closing if the developer has not complied with the conversion ordinance), King County, and Seattle. In Lakewood and Lyndhurst, if the Offering Statement is not given at least 15 days in advance of contract, the purchaser has 15 days to rescind. The purchaser may rescind at any time up to closing in Everett and King County, if the required notices and disclosures are not given. Minneapolis and Wayzata, Minnesota allow a purchaser five days after contract within which to rescind.

[54] California, Florida, Georgia, Illinois, Michigan, New Jersey, New York, Ohio, South Dakota, and Virginia require this.

[55] Hawaii and Montana tie the escrow of funds to issuance of the full disclosure report.

Other provisions are more closely related to the actual purchase contracts for the units. Lakewood and Lyndhurst enumerate "specific unlawful representations" such as falsely stating the number of back-up sales contracts or making a false statement with respect to a future rent increase. Montgomery County treats as void any waiver of purchasers' rights. The Arlington Heights, Illinois ordinance contains an unusual provision that oral representations are not binding on the developer, and directs the purchasers to read the Full Disclosure Report provided to them. In contrast, the ordinances in Everett and Seattle state that it is unlawful to make oral representations which differ from statements made in the disclosure documents.

CONCLUSION

State statutes and local ordinances that regulate the conversion of rental housing to condominiums and cooperatives take different forms in different areas. The types of coverage these laws provide vary widely, depending on the amount of conversion activity within each jurisdiction, and the corresponding legislature's ability to formulate a "reasoned" response. Typically, statutes and ordinances are enacted on a reactive basis. Seldom are laws passed in anticipation of a flurry of conversion activity.

Many states are revising their "first-generation" condominium statutes to ensure that both conversion buyers and the tenants of converting units receive better protections. Consideration of the Uniform Condominium Act (UCA) is expected in a dozen state legislatures in 1981. 56/ Under the UCA, information disclosed regarding a developer's plan to convert must include a description of the property and the building. States which adopt the UCA also require developers to grant tenants in buildings subject to conversion an exclusive option to buy their units, at a price and on terms first offered to them, before they may be offered to third parties. For those who choose not buy their converting units, a four-month period in which to find alternate housing is guaranteed, and the conditions for eviction are limited under the Act. Beyond granting broader protections to buyers and tenants, the UCA establishes standard "second-generation" condominium legislation within States. If more states adopt the provisions in the UCA, of course, conversion regulation will begin to approach nation-wide uniformity.

Ordinances that regulate conversion activity on the local level may, in many cases, provide even further protections to tenants and consumers. The examples of local ordinances used in this report suggest that some communities, particularly those where conversion activity is high, also consider the impact conversions may have on their available supply of rental housing, and/or on certain "protected" groups of tenants. Measures that address these concerns often result

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56/ They are Arizona, Colorado, Illinois, Maine, Massachusetts, Michigan, Missouri, North Carolina, Rhode Island, Tennessee, Vermont and Wyoming.

in legislative remedies ranging from the consideration of vacancy rates and moratoria, to set-aside provisions for low- and moderate-income housing; from relocation assistance to life-time leases. The ability of local governments to enact ordinances depends on the traditional roles they assume as creatures of the state. Although most localities have the authority to legislate in the conversion field as they see fit in order to tackle local issues without interference from the state, some localities do not; they are restrained from passing conversion ordinances due to the state's primacy in housing legislation.

As of 1980, the number of local ordinances being enacted nation-wide is increasing. The continuation of this trend may depend on what type of legislative activity takes place at other levels of government. Also, as more states enact the UCA, more local governments may be prohibited from passing their own conversion ordinances. In the absence of amendments to it that would allow localities to regulate conversions, the UCA gives states the preemptive power to legislate in this area.

*U.S. GOVERNMENT PRINTING OFFICE: 1982--365-221/433